रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 11] नई दिल्ली, मार्च 9—मार्च 15, 2014, शनिवार/फाल्गुन 18—फाल्गुन 24, 1935
No. 11] NEW DELHI, MARCH 9—MARCH 15, 2014, SATURDAY/PHALGUNA 18—PHALGUNA 24, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 904.—केन्द्रीय सरकार, एतद्द्वारा, ऋण वसूली अधिकरण, रांची के स्थान को नीचे दी गई सारणी के कॉलम 3 में उल्लिखित स्थान की जगह सारणी के कॉलम 4 में उल्लिखित स्थान पर 24 फरवरी, 2014 से नीचे दिए गए विवरण के अनुसार परिवर्तित करती है:—

क्रम सं॰	ऋण वसूली अधिकरण	वह स्थान जहां अधिकरण काम कर रहा है	वह स्थान जहां अधिकरण काम करेगा
1.	ऋण वसूली अधिकरण, रांची	बद्री नारायण भवन स्ट्रीट, रातू रोड, पोस्ट आफिस-हेहल, रांची-834005 (झारखण्ड)	ऋण वसूली अधिकरण, प्रगति सदन, (आरआरडीए बिल्डिंग) पांचवीं मंजिल, कटचेरी रोड, पोस्ट आफिस-जीपीओ, रांची-834001 (झारखण्ड)

[फा॰ सं॰ 20/5/2001-डीआरटी]

राजीव शर्मा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 24th February, 2014

S.O. 904.—The Central Government hereby notifies the change in the location of Debts Recovery Tribunal, Ranchi from the place mentioned in column 3 to the place mentioned in column 4 in the table with effect from 24th February, 2014.

Sl. No.	Debts Recovery Tribunal	Place where the Tribunal was functioning from	Place at which the Tribunal will function from
(i)	Debts Recovery Tribunal, Ranchi	Badri Narayan Bhawan Street, Ratu Road, P.O.-Hehal, Ranchi-834005 (Jharkhand)	Debts Recovery Tribunal, Pragati Sadan (RRDA Building), 5th Floor, Kutchery Road, P.O.-GPO, Ranchi-834001 (Jharkhand).

[F. No. 20/5/2001-DRT]

RAJIV SHARMA, Under Secy.

कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 20 फरवरी, 2014

का॰आ॰ 905.—केंद्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं॰ 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए केरल राज्य सरकार, गृह (एम) विभाग, तिरुवनंतपुरम के दिनांक 16 अगस्त, 2013 की अधिसूचना जी॰ओ॰ (एमएस) सं॰ 199/2013/गृह द्वारा प्राप्त सहमति से देश भर के भारतीय प्रबंधन संस्थानों (आईआईएम) में अभ्यर्थियों के चयन हेतु संचालित सामान्य प्रवेश परीक्षा (कैट) के अंकों में फेर-बदल करने तथा बड़ी मात्रा में धन के गबन और कर-वंचन में संलिप्त अनेक अन्य लोगों और उक्त अपराधों से संबंधित या इनसे जुड़े प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों का अन्वेषण करने के संबंध में पुलिस थाना कुन्नमंगलम, जिला कोजीकोड, केरल में भारतीय दंड संहिता, 1860 (1860 काअधिनियम संख्या 45) की धारा 120-ख और 406 तथा सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का अधिनियम संख्या 21) की धारा 65 के तहत दर्ज अपराध सं॰ 416/2013 की जांच हेतु दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकार क्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है।

[फा॰ सं॰ 228/80/2013-एवीडी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 20th February, 2014

S.O. 905.—.In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram *vide* Notification G.O. (Ms.) No. 199/2013/Home dated 16th August, 2013, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Kerala for investigation of Crime No. 416/2013 under sections 120-B and 406 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and section 65 of the Information Technology Act, 2000 (Act No. 21 of 2000) registered at Police Station Kunnamangalam, District Kozhikkode, Kerala relating to the alteration of marks of the Common Admission Test (CAT) conducted for selecting candidates to the Indian Institute of Management (IIM) across the country and many other people involving large scale embezzlement of money and tax evasion and attempts, abetments and conspiracies in relation to the above mentioned offences.

[F. No. 228/80/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 20 फरवरी, 2014

का॰आ॰ 906.—केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं॰ 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक सरकार के गृह विभाग (अपराध) बंगलौर के दिनांक 29 अक्तूबर, 2013 के आदेश सं॰ एचडी 79 सीओडी 2013 द्वारा प्राप्त सहमति से आयुक्त, रामनगर, चनपट्टन शहरी विकास प्राधिकरण बी॰एम॰ रोड, इजूर, रामनगर, कर्नाटक और अन्य गैर सरकारी व्यक्तियों के विरुद्ध रामनगर, चनपट्टन शहरी विकास प्राधिकरण में 9.90 करोड़ (नौ करोड़ और नब्बे लाख) रुपए के दुर्विनियोजन तथा उपर्युक्त अपराधों के प्रयास, दुष्प्रेरण और षड्यंत्र तथा इनके समान ही अन्य तथ्यों से उत्पन्न अपराध या अपराधों के अन्वेषण के संबंध में

पुलिस स्टेशन, इजूर, रामनगर, टाऊन सर्किल, रामनगर जिला, कर्नाटक में भारतीय दंड संहिता 1860 (1860 का अधिनियम संख्या 45) की धारा 34, 409, 420, 468 और 471 के तहत दर्ज दिनांक 16.07.2013 की प्राथमिकी संख्या 0123/2013 की जांच के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकार क्षेत्र का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[फा॰ सं॰ 228/8/2014-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 20th February, 2014

S.O. 906—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, Home Department (Crimes), Bangalore *vide* Order No. HD 79 COD 2013 dated 29th October, 2013, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of FIR No. 0123/2013 dated 16.07.2013 under sections 34, 409, 420, 468 and 471 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and other offences registered at Police Station Ijoor, Ramanagara Town Circle, Ramanagara District Karnataka against the Commissioner, Ramanagara Channapattan Urban Development Authority, B.M. Road, Ijoor, Ramanagara, Karnataka and other private persons relating to misappropriation of Rs. 9.90 crores (Rupees Nine Crores and Ninety Lakhs only) in Ramanagara Channapattan Urban Development Authority and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences arising out of the same facts.

[F. No. 228/8/2014-AVD-II]
RAJIV JAIN, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 907.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खण्ड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गए हैं:—

सारणी

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1.	आई एस 10524-(भाग 3):2005 मैडिकल गैसों के साथ प्रयोग होने वाले प्रैशर रेगुलेटर भाग 3 सिलेंडर वाल्व के साथ एकीकृत प्रैशर रेगुलेटर	—	दिसम्बर, 2013
2.	आई एस 10524-(भाग 4):2008 मैडिकल गैसों के साथ प्रयोग होने वाले प्रैशर रेगुलेटर भाग 4: कम प्रैशर के रेगुलेटर	—	दिसम्बर, 2013

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, एवम् क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलुरू, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा कोची में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एम एच डी/जी-3.5]
एस॰ किशोर कुमार, वैज्ञानिक 'एफ' एवं प्रमुख (एम एच डी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 24th February, 2014

S.O. 907.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :—

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. and year of Indian Standards, if any, superseded by the new Indian Standard	Date established
1.	IS/ISO 10524-3:2005 Pressure Regulators for use with medical gases Part 3: Pressure regulators integrated with cylinder valves	Nil	December, 2013
2.	IS/ISO 10524-4: 2008 Pressure Regulators for use with medical gases Part 4: Low-Pressure regulators	Nil	December, 2013

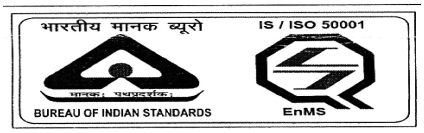
Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. MHD/G-3.5]

S. KISHORE KUMAR, Scientist 'F' & Head (MHD)

नई दिल्ली, 6 मार्च, 2014

का॰आ॰ 908.—अधिसूचना संख्या का॰ आ॰ 1795 दिनांक 13 जून, 2007 के अधिग्रहण में भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो नीचे अनुसूची में दिये गये विभिन्न प्रबंध पद्धति प्रमाणन संबंधी मानक मुहर के डिज़ाइन तत्काल प्रभाव से अधिसूचित करता है:—

क्रम संख्या	मानक मुहर का डिज़ाइन	प्रबंध पद्धति की किस्म्	भारतीय मानक की संख्या
1.		गुणता प्रबंध पद्धति	आईएस/आईएसओ 9001
2.		ऊर्जा प्रबंध पद्धति	आईएस/आईएसओ 50001

[सन्दर्भ एम एस सी डी/2:1:3]

मधुलिका प्रकाश, उपमहानिदेशक (पीपी एंड सी)

New Delhi, the 6th March, 2014

S.O. 908.— In supersession of Notification, No. S.O. 1795 dated 13th June, 2007 and in pursuance of sub-rule (1) of Rule 9 of the Bureau of Indian Standards Rules 1987, the Bureau of Indian Standards hereby notifies the Standard Mark for various Management Systems Certification in accordance with the relevant Indian Standards as given in the schedule below with immediate effect:

Sl. No.	Design of the Standard Mark	Type of Management System	No. of the Indian Standards
1.		Quality Management System	IS/ISO 9001
2.		Energy Management System	IS/ISO 50001

[Ref. MSCD/2:1:3]

MADHULIKA PRAKASH, Dy. Director, General (PP&C)

नागर विमानन मंत्रालय

(एएआई अनुभाग)

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 909.—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का 55) की धारा 3 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, नागर विमानन मंत्रालय के निम्नलिखित अधिकारियों को तत्काल प्रभाव से भारतीय विमानपत्तन प्राधिकरण बोर्ड में नियुक्त करती है:—

1. श्री प्रभात कुमार (आइ ए एस); नागर विमानन महानिदेशक को श्री अरुण मिश्र (आई ए एस) के स्थान पर भारतीय विमानपत्तन प्राधिकरण के बोर्ड में पदेन सदस्य के रूप में; और

2. श्री एम॰ कन्नन, आर्थिक सलाहकार, नागर विमानन मंत्रालय को श्री आलोक सिन्हा, संयुक्त सचिव, नागर विमानन मंत्रालय के स्थान पर भारतीय विमानपत्तन प्राधिकरण के बोर्ड में अंशकालिक सदस्य के रूप में।

[सं॰ एवी-24015/5/2013-एएआई]

सैय्यद इमरान अहमद, अवर सचिव

MINISTRY OF CIVIL AVIATION

(AAI SECTION)

New Delhi, the 21st February, 2014

S.O. 909.—In exercise of the powers conferred under section 3 of the Airports Authority of India Act, 1994 (No. 55 of 1994), the Central Government hereby appoints following Officers of Ministry of Civil Aviation on the Board of Airports Authority of India with immediate effect:

1. Shri Prabhat Kumar (IAS), Director General of Civil Aviation as Ex-officio Member on the Board of Airports Authority of India vice Shri Arun Mishra (IAS); and

2. Shri M. Kannan, Economic Adviser, Ministry of Civil Aviation as part-time Member on the Board of Airports Authority of India vice Shri Alok Sinha, Joint Secretary, Ministry of Civil Aviation.

[No. AV-24015/5/2013-AAI]

SYED IMRAN AHMED, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 910.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन पावर ग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड के 400 केवी उपकेन्द्र, 21 कि॰मी॰ माईल स्टोन नैनीताल रोड, पोस्ट-आटामांडा, बरेली-243202 जिसके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है।

[सं॰ 11017/10/2013-हिंदी]

रीता आचार्य, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 24h February, 2014

S.O. 910.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (use for official purpose of the union) Rules, 1976, the Central Government hereby notify Limited 400 KV Substation, 21 KM. Mile Stone, Nainital Road, Post : Attamanda, Bareilly-243202 of the Power Grid Corporation of India Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi.

[No.11017/10/2013-Hindi]

RITA ACHARYA, Jt. Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 3 मार्च, 2014

का॰आ॰ 911.—जबकि भारतीय चिकित्सा परिषद; संशोधन अध्यादेश, 2013 की धारा 3क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 06 नवंबर, 2013 को भारतीय चिकित्सा परिषद का पुनर्गठन किया गया:

और जबकि केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खंड (ग) के अनुसरण में पंजीकृत आयुर्विज्ञान स्नातक निर्वाचन क्षेत्रों से सदस्यों का निर्वाचन किया और निम्नलिखित व्यक्ति को इस अधिसूचना के जारी होने की तिथि से चार वर्षों के लिए भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में निर्वाचित किया गया है।

अत: अब उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबंध के अनुसरण में केन्द्र सरकार द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का॰आ॰ 138 में निम्नलिखित संशोधन किए जाते हैं; अर्थात्:

भारत सरकार, स्वास्थ्य एंव परिवार कल्याण मंत्रालय की दिनांक 06 नवंबर, 2013 की अधिसूचना संख्या का॰आ॰ 3324 (अ) में अंतिम प्रविष्टि तथा तत्संबंधी प्रविष्टि में निम्नलिखित को जोड़ा जाएगा, अर्थात्:

क्रम॰ सं॰	पंजीकृत चिकित्सा स्नातक निर्वाचित क्षेत्र का नाम	निर्वाचित सदस्य का विवरण	निर्वाचन की प्रक्रिया
11.	अरुणाचल प्रदेश	डा॰ ताओ काकी, मेडिकल विशेषज्ञ (सेलेक्शन ग्रेड), चिकित्सा विभाग, अरुणाचल राज्य अस्पताल, नाहरलागुन, अरूणाचल प्रदेश	निर्विरोध निर्वाचित

[सं॰ वी. 11013/1/2013-एम ई पी-I (वोल-II)]

अमित बिस्वास, अवर सचिव

पाद टिप्पणी: दिनांक 9 जनवरी, 1960 के का॰आ॰ 138 के तहत भारत के राजपत्र में मुख्य अधिसूचना प्रकाशित की गई थी और भारतीय आयुर्विज्ञान परिषद (संशोधन), द्वितीय अध्यादेश, 2013 (2013 का 11) के तहत अंतिम बार संशोधित किया गया था।

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 3rd March, 2014

S.O. 911.—Whereas on 06th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3 A of the Indian Medical Council (Amendment) Ordinance, 2013;

And whereas the Central Government, in pursuance of clause (c) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956) has conducted the election from the Registered Medical Graduate Constituency and the following has been elected to be a member of the Medical Council of India for four years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub section (1) of Section 3 of the said Act, the Central Government hereby makes the following amendment in the notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely:—

In the notification of the Government of India in the Ministry of Health & Family Welfare number S.O. 3324(E) dated the 06th November, 2013, after the last entry and entry relating thereto, the following shall be inserted, namely:

S. No.	Name of the Registered Medical Graduate Constituency	Details of the Elected Member	Mode of Election
11.	Arunachal Pradesh	Dr. Tao Kaki, Medical Specialist (Selection Grade), Department of Medicine, Arunachal State Hospital, Naharlagun, Arunachal Pradesh	Elected (unopposed)

[No. V. 11013/1/2013-MEP-I (Vol.II)]

AMIT BISWAS, Under Secy.

Foot Note : The principal notification was publish in the Gazette of India vide number S.O. 138 dated the 9th January, 1960 and was last amended vide Indian Medical Council (Amendment) Second Ordinance, 2013 (11 of 2013).

संस्कृति मंत्रालय

नई दिल्ली, 20 फरवरी, 2014

का॰आ॰ 912.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनो के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय भारतीय पुरातत्व सर्वेक्षण, चण्डीगढ़ खण्ड, केंद्रीय सदन, भूतल, सेक्टर 9 ए, चण्डीगढ़, को जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. 13016/1/2011-हिंदी]

श्रेया गुहा, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 20th February, 2014

S.O. 912.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 the Central Govt. hereby notifies the office of Archaeological Survey of India, Chandigarh Zone, Kendriya Sadan, Ground Floor, Sector 9-A, Chandigarh under Ministry of Culture wherein more than 80% staff have acquired working knowledge of Hindi.

This noltification shall come into force from the date of publication in the Official Gazette.

[F. No. 13016/1/2011-Hindi]

SREYA GUHA, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 913.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेशवर के पंचाट (संदर्भ सं॰ 33/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/80/2010-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st February, 2014

S.O. 913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 21/02/2014.

[No. L-12012/80/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 33/2011

Date of Passing Award-17th October 2013

Between:

The Branch Manager,
UCO Bank, Jamsuli Branch,
Po. Jamsuli, Dist. Balasore, Orissa

.... 1st Party-Management.

(And)

Their workman Shri Jnana Ranjan Jena,
S/o Late Bhaban Chandra Jena,
Vill. Po. Jamsuli, P.S. Singla,
Dist. Balasore, Orissa

.... 2nd Party-Workman.

Appearances:

Shri R.N. Chand Auth. Representative.	...	For the 1st Party - Management.
None.	...	For the 2nd Party Workman.

AWARD

An industrial dispute existing between the employers in relation to the management of UCO Bank, Jamsuli Branch and their workman has been referred to this Tribunal by the Government of India in the Ministry of Labour exercising the powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-12012/80/2010-IR (B-II) dated 27.05.2011.

2. The matter under dispute has been given under the Schedule of the aforesaid letter which reads as follows:—

"Whether the action of the UCO bank, Jamsuli Branch, Balasore in terminating the services of Shri Jnana Ranjan Jena, Ex-Workman/Employee of UCO Bank, Jamsuli Branch w.e.f. 01.09.2009 by ignoring the provisions of Industrial Disputes Act, 1947 is justified? What relief the workman is entitled to?"

3. The 2nd Party-workman has alleged that he was engaged as a Clerk-cum-Computer Operator in UCO Bank, Jamsuli Branch, Balasore in the month of January, 2004 by the then Branch Manager on a monthly salary of Rs. 2000. Since the date of his appointment he had been performing his duties sincerely, honestly and diligently in the said branch. His salary was increased first from Rs. 2000/ to Rs. 2500 and then to Rs. 3000 per month on satisfactory performance. But suddenly the Branch Manager in order to deprive him from statutory benefits and privileges illegally and arbitarily did not allow him to perform his duties from 1st Sept., 2009 and verbally terminated his services. But before termination of his service he was neither given any prior notice nor any retrenchment compensation. This act of termination of service by the Branch Manager is highly illegal and arbitrary and also contrary to the mandatory provisions of the Industrial Disputes Act, 1947. The 2nd Party-workman personally approached the Branch Manager for his reinstatement, but he avoided to consider his grievance. Therefore he sent a letter to the Branch Manager with a copy to the Chairman, UCO Bank, Head Office, Calcutta and Regional Manager, UCO Bank, Cuttack. But all of them remained silent over the matter. Thereafter he approached the Regional Labour Commissioner (Central), Bhubaneswar with a complaint to intervene in the matter. Despite repeated efforts by the Regional Labour Commissioner (Central), Bhubaneswar no settlement could be arrived at. Consequently a failure report was sent to the Government on which this reference was made. Therefore the 2nd Party-workman is entitled to reinstatement of service with full back wages and continuity in service and other consequential service benefits.

4. The 1st Party-Management in reply to the allegations of the 2nd Party-workman has submitted that the instant reference is neither maintainable in law nor has any merit whatsoever for the purpose of industrial adjudication. The alleged engagement of the 2nd Party-workman was not in accordance with the policy of the recruitment, criteria of engagement of personnel to the sanctioned posts and availability of all the salary, allowances and benefits as are applicable to the Bank employees. No rules, policy and procedure were followed at the time of engagement of the 2nd Party-workman. Thus the restraint put by the Bank for non-continuance of such illegal process cannot be construed as a case of retrenchment/termination of service by way of refusal of employment as is explicit from the undisputed facts of the case. The 2nd Party-workman was engaged on some job, which was required to be performed by the Branch Manager/Officer of the Bank himself. The 2nd Party-workman appears to have been engaged at the personal level of the Branch Manager to cater to the computerized operations of the Branch. However such an engagement was not only without the knowledge of the competent and higher authority of the Bank, but also the same was without following due procedure of recruitment in the Bank. Neither any advertisement for such a post in the Jamsuli Branch was published nor the disputant was ever employed against any defined post whatsoever. At no point of the time the 2nd Party-workman was on the pay rolls of the Bank. His services, if any, were temporary and

casual in nature which was never based on a proper selection process as recognized by the relevant rules and procedure. Since no valid or proper appointment or recruitment of the disputant was made by the 1st Party-Management the question of depriving him of any statutory benefits and privileges with verbal direction of termination of service is thoroughly misconceived. There has been no violation of any provision of the Industrial Disputes Act, 1947 as erroneously alleged by the 2nd Party-disputant. In case of public employments, any appointment de hors due process of selection envisaged by the constitutional scheme confers no right on the appointee.

5. On the basis of the pleadings of the parties, following issues were framed:—

ISSUES

1. Whether the action of the UCO Bank, Jamsuli Branch, Balasore in terminating the services of Shri Jnana Ranjan Jena, Ex-Workman/Employee of UCO Bank, Jamsuli Branch w.e.f. 01.09.2009 by ignoring the provisions of Industrial Disputes Act, 1947 is justified?

2. What relief the workman is entitled?

6. The 2nd Party-workman did not adduce any oral evidence in support of his claim. He has filed certain documents in the shape of xerox copies along with his statement of claim, but those documents have neither been proved in evidence nor exhibited. Hence they cannot be legally read in evidence.

7. On the other hand the 1st Party-Management has filed sworn affidavit of Shri Rabindra Nath Chand in evidence along with three documents in the shape of photostat copies.

8. It is worth mentioning here that the 2nd party-workman has never appeared before this Tribunal. Even he has sent his statement of claim through post. This shows that how much he is interested in his case. Viewing his continuous absence the case was set exparte against him on 2.4.2013.

FINDINGS

ISSUE No.1

9. As the 2nd Party-workman has failed to appear before this Tribunal/Labour Court and to adduce any oral evidence even to prove the documents filed by him along with his statement of claim, the claim of the 2nd Party-workman remains without evidence. The 1st Party-Management on the other hand has alleged and also shown through its uncontroverted evidence of its witness Shri Rabindra Nath Chand that the 2nd Party-workman was never appointed as per the recruitment rules, policy and procedure existing in the Bank. Therefore he cannot claim any right to the post alleging his termination as illegal. The 2nd Party-workman was allegedly engaged by the then Branch Manager of the 1st Party-Management in his personal capacity without any sanction or approval of the competent authority. Consequently his disengagement cannot be said to amount to termination of his services. He was, at no point of time, on the pay roll of the Bank. The Branch Manager, who engaged the 2nd Party-workman was punished for his unauthorized and illegal act in appointing the 2nd Party-workman.

10. In view of the exparte evidence of the 1st Party-Management its action in terminating the services of Shri Jnana Ranjan Jena, ex-workman/employee with effect from 1.9.2009 is held to be fully justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE No. 2

11. Since the 2nd party-workman has failed to prove his case and the action of the management has been held to be valid and justified the 2nd Party-workman is not entitled to any relief.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 914.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बैंगलोर के पंचाट (07/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/180/2001-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 21st February, 2014

S.O. 914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 07/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 21-02-2014.

[No. L-12012/180/2001-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 9th April 2013

PRESENT : Shri S.N. Navalgund, Presiding Officer

C.R. No. 07/2002

I Party

Sh. D.N. Narase Gowda,
No. 11/1, 1st Cross,
15th Main, Srinagar,
BANGALORE-560 050

II Party

The Managing Director,
Dena Bank, Sona Towers,
1st Floor, 71, Millers Road,
BANGALORE-560 052

Appearances :

1 Party : Sh. Muralidhara
Advocate

11 Party : Sh. Ramesh Upadhayay
Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/180/2001-IR(B-II) Dated 24.01.2002 for adjudication on the following schedule:

SCHEDULE

"Whether the action of Dena Bank is justified in dismissing Shri D.N. Narase Gowda, Clerk from the services of the Bank? If not, what relief the workman is entitled to?"

2. On receipt of the reference this tribunal while registering it is in CR 07/2002 after securing the presence of both the sides receiving their pleadings, since the 1 Party counsel conceded the Domestic Enquiry held against the 1 Party by the II party being Fair and Proper after hearing the arguments of the learned advocates appearing for both sides my learned predecessor by Award dated 29.11.2004 while upholding the finding of the Enquiry Officer the charge of misappropriation of Rs. 14565.00 being proved against the1 Party, taking into account the length of 26 years of service rendered by the 1 Party and observing that his service with unblemished reduced the punishment of Dismissal to one of Removal from Service with Superannuation benefits such as Pension, Gratuity, PF etc. Being aggrieved by this Award the management as well as the workmen approached the Hon'ble High Court of Karnataka in W P 17282/2005 and 21414/2005 and the Hon'ble High Court disposed off both the Writ Petitions by Common Order dated 15.09.2009 dismissing the Writ of the Workman and allowing Writ of the Management and thereby set aside the Award so far it relates to the modicifiation of the punishment and remitted back the matter to this tribunal for reconsideration relating to the punishment. Aggrieved by the said order of the single judge both preferred Writ Appeals in W A Nos. 3526/2010 and 3629/2010 and the Hon'ble Division bench dismissed both the Appeals by Order dated 23.10.2010.

3. In view of the above narrated facts the only point that now remains for my consideration is whether the punishment imposed by the II party against the 1 party Dismissing him from Service is disproportionate to the misconduct proved against him?

4. On appreciation of the misconduct proved against the 1 Party of stealing four cheques aggregating to Rs. 14565.00 and fraudulently encashing them which amounts to a gross misconduct and the previous disciplinary action against him the record of which is at Page 1 to 3 of the Enquiry File, with the arguments addressed by learned advocate for both sides my finding on the above point is in the Negative for the following reasons:

REASONS

5. The learned advocate appearing for the II party while referring to the Bio-Data and Previous Disciplinary Action against the 1 Party copy of which is produced along with the list of documents dated 09.08.2004 urged for similar acts on the part of the 1 party he did not improve in his conduct and as the charge of stealing four cheques totally amounting to Rs. 14565.00 and fraudulently encashing them being highly unbecoming of a Bank Official and it is not safe to continue him in service the punishment imposed Dismissing him from Service being Just and Proper there is nothing for interference by this court. Interalia, the learned advocate appearing for the 1 Party submitted that since 1 Party joined the service of II party on 01.04.1972 and served the II party over a period of 26 years and under Memorandum of Settlement dated 10.04.2002 between the Banks represented by the Indian Banks Association and their Workmen as represented by the All India Bank Employees' Assoication, National Confederation of Bank Employees, Indian National Bank Employees' Federation, an Employee found guilty of misconduct under Sub-clause (b) to Clause (6) can even by ordered for Removal from Service with superannuation benefits *i.e.* Pension Provident Fund and Gratuity the earlier Award passed by this tribunal reducing the punishment of dismissal with removal from service with consequential benefits is just and proper and same may kindly to maintained.

6. No doubt under Settlement referred to by the learned advocate appearing to the I party dated 10.04.2002 subsequent to the present reference under clause 6 an employee found guilty of gross misconduct may :

a. be dismissed without notice; or

b. be removed from service with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relavant time and without disqualification from futher employment; or

c. be compulsorily retired with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratutity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from futher employment; or

d. be discharged from service with superanuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employement.

but in each and every case the gross misconduct proved against the employee has to be taken into consideration. In the instant case the misconduct proved against the I party being that of stealing four cheques totally amounting to Rs. 14565.00 and fraudulently encashing them cannot be a matter to raise sympathy in favour of the I party since he had served the Bank over a period of 26 years. It reveals from his Bio-Data furnished by the management that as back as 11.06.1976 there was a complaint from Staff Training Centre (STC) of borrowing money fromTrainees; a complaint from one Puttanna in the year 1978 taking money from him promising a job in the Bank; issuing seven cheques without sufficient balance in the account; issuing token against SB Cheque for Rs. 14000.00 though there was no sufficient balance in the account and for all these acts he was after issuing show cause notice and reciving reply was either Warned or Censured.These acts on the part of I party suggest that since all along a lenient view was taken by the Bank relating to his financial misdeeds he was encouraged and this time he went to the extent of stlaling four cheques amounting to total sum of Rs. 14565.00 and fraudulently encashing them which on due enquiry found to have been proved is not a matter to be viewed leniently to impose a lesser punishment provided for anact of gross-misconduct. Under the circumstances for the present misconduct proved againts the I party of stealing four cheques totally amounting to Rs. 14565.00 and fraudulently encashing them he did not deserve any other lesser punishment than the Dismissal from Service which is imposed by the Disciplinary Authority and affirmed by the Appellate Auhtority and that I find no reason to interfere in the same. In the result, I pass the following Order:

ORDER

The Reference is Rejected holding that the action of the Dena Bank in dismissing Shri D. N. Narse Gowda, Clerk from the services of the Bank is legal and justified.

(Dictated to UDC, transcribed by him, corrected and signed by me on 9th April 2013)

S.N. NAVALGUND, Presiding Officer.

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 915.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बैंगलोर के पंचाट (81/1991) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/208/91-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 21st February, 2014

S.O. 915.—In pursurance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 81/1991) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 21/02/2014.

[No. L-12012/208/91-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEUXRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

Dated : 18th September, 2013

PRESENT : Shri S.N. NAVALGUND,

Presiding Officer

C.R. No. 81/1991

I Party	**II Party**
Shri D. Shankar Prabhu,	The Divisional Manager,
S/o D Krishna Murthy,	UCO Bank,
Ex LB Deposit Collector,	Divisional Office,
C/o V Sripad, No. 74-43,	Kempegowda Circle,
Ganagarpet, Raichur-584101	Bangalore-9

Appearances:

I Party : Sh. V. Sripad,
Advocate

II Party : Sh. K. Prabhakar Rao,
Advocate

AWARD

1. The Central Government vide order No. L-12012/208/91-IR(B-II) dated 14.11.1991 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of UCO Bank in terminating the services of Shri Shankar Prabhu, Deposit Collector is justified? If not, to what relief is the workman entitled"

2. On receipt of the reference while registering it in CR 81/1991 when notices were issued to both the sides the I party workman filed his claim statement on 10.12.1991 claiming that he who was appointed by the II Party at its Raichur branch as Laghu Bachat Pigmy Deposit Collector from 14.11.1978 rendered good and efficient service honestly and by his hard work developed the said scheme and earned a good reputation in the society but unfortunately the II Party suddenly temporarily stopped the said scheme on 31.12.1983 with a malafide intention to spoil his life and did not allow him to collect the deposits until 15.02.1991 he made several requests to reinstate him into service but no response was shown and that he who was earning commission of Rs. 1,200.00 per month being deprived of the said earnings his termination/Obstruction in his service by the II party be declared as Erroneous, illegal and direction be issued to pay him Rs. 1,200.00 p.m. since from the date of termination/obstruction from 31.12.1983 till his reinstatement. The II party through its counter statement filed on 17.07.1992 opposed this claim of the I Party contending that the I Party who claims termination of his agency on 31.12.1983 having raised this dispute after a lapse of eight years in 1991 it is liable to be rejected on this ground of delay itself. It is further contended the I Party being engaged as Agent to collect the Deposits under the Laghu Bachat Yojana Scheme is not a workman as defined under Section 2(s) of the ID Act and that his allegation that he was discharging his duties sincerely and honestly are false and that he was found to be very irresponsible unattentive and irregular in maintaining upto date account of depositors and was also not remitting the amount in time and infact for about six months he did not make any deposit to the ban even though he had collected deposits from the Pigmy Account Holders and when enquiries were made it revealed that he had defrauded the account holders as also the bank by utilising the amount collected by him and when he was asked to furnish a detailed account on 19.01.1984 he gave the details and conceded having misappropriated a sum of Rs. 21850.00 in his own handwriting. It is further contended on I Party furnishing such details it obtained from him an indeminity bond along with his brother B Lakshmikant on 10.02.1984 and thereafter when the matter was under investigation by the vigilance department the I Party through his letter dated 29.11.1984 gave authorisation for sending confirmation to Laghu Bachat Account Holders. It is further contended the Divisional Manager, Bangalore by his letter dated 02.02.1981 had instructed the Branches not to introduce Laghu Bachat Yogana Scheme in new branch and not to appoint any new agents in Branches which are in force and when the misappropriation by the I Party came to light he abandoned his work and stopped visiting the bank almost for a period one year period prior to 1984 and in this view of the matter the Lagu Bachat Yojana has been discontinued from 19.01.1984. Thus it is contended the I Party who had misappropriated the amount collected by him from the Pigmy account holders to the tune of Rs. 21850.00 on his own abandoned the agency and that after eight years suppressing all these facts having come up with this dispute after a long delay of eight years the reference is liable to be rejected.

3. On the above pleadings my learned predecessor while receiving the evidence of I Party and of Rajgopal Hebbar, Officer for the II party as WW 1 and MW 1 and in the cross-examination of WW 1 by way of confrontation exhibiting letter written by I Party to II Party for being appointed as Pigmy Agent; the letter of appointment issued to the I Party; letter of acceptance given by the I Party dated 22.11.1978; letter of the I Party stating that there was a delay in collected the deposits from the customers dated 21.12.1982; I Party letter accepting lapses on his part with regard to the complaints made by the customers dated 08.09.1983; I Party letter accepting misappropriation of Rs. 21,850.00 relating to the customers dated 19.01.1984; the list of the customers furnished by I Party with amount collected from them; Doorvani Paper dated 13.04.1984 containing publication given by the bank cautioning the public not to make transaction with the I Party; Indemnity Bond executed by the I Party dated 10.02.1984; signature of the I Party brother Sh. Laxmikanth; letter written by the I Party requesting the bank to adjust the expenses incurred with regard to the security deposit of the customers dated 29.11.1984; letter of the I Party requesting the bank to transfer the security deposit to the fixed deposit dated 29.11.1984; letter of the I Party requesting the bank to transfer the bank security deposit to his brother's account dated 09.02.1984; letter written by the I Party to the II Party dated 21.11.1984; Indemnity Bond executed by the I Party in favour of the bank dated 10.02.1984 for the II Party as Ex. M-1 to Ex. M-15 respectively and Laghu Bachat Yojana (Modified) Scheme as Ex. M-16 in the evidence of MW 1 and Appointment of I Party as Laghu Bachat Yojana Agent as Ex. W-1 in the evidence of WW 1 after hearing the arguments of both sides by his award dated 17.01.1994 accepting the contention of the II Party that I Party is not a workman as defined under Section 2(s) of the ID Act without going into the contention of the II Party that I Party had misappropriated the amount collected by him from the Pigmy Account Holders and on his own abandoned the collection of deposits rejected the reference. When the said Award was challenged before the Hon'ble High Court of Karnataka by the I Party in WP No. 28637/1994 the Hon'ble High Court by order dated 29.07.1998 set aside the said award holding that in view of the decision of that court in WP No. 21359/1989 wherein similarly placed workman employed by the Karnataka Bank are held as Workmen within the ambit of Section 2(s) of ID act remitted back the matter for fresh disposal in relation to other disputes.

4. After the order of Hon'ble High Court in WP No. 286347/1994 again this tribunal by registering it in its original number on hearing fresh arguments on the same evidence

adduced earlier by award dated 23.11.2001 directed the management to regularise the services of the I Party as per the directions of the Hon'ble Supreme Court of India. When this award was challenged by the II Party before the Hon'ble High Court of Karnataka in WP No. 12219/2002 (L-TER) the Hon'ble High Court by order dated 06.07.2006 while observing 'in the counter statement though it is specifically pleaded the claim of the I Party is barred by delay of eight years the same is not considered and even the evidence adduced by both the sides on the alleged misconduct pleaded by the II Party being not considered the award is not sustainable' set aside the award and remanded back for fresh disposal keeping all questions open for consideration.

5. Pursuant to the order of the Hon'ble High Court in WP No. 12219/2002 this tribunal again taking the reference in its original number on hearing the fresh arguments addressed by the learned advocates appearing for both sides on the same evidence adduced earlier by award dated 03.04.2007 directed the II Party/Management to pay a sum of Rs. 150000.00 to the I Party workman towards full and final settlement. When this award was again challenged by the II Party/Management before the Hon'ble High Court of Karnataka in WP No. 14471/2007 (L-TER), the Hon'ble High Court by order dated 18.03.2013 while observing that Ex. M-1 to Ex. M-16 are marked in the evidence of WW 1 and they are marked through the management witness MW 1. The entire cross-examination of WW 1 is in relation to the charge levelled against him. But MW 1 in his examination-in-chief has not whispered a word with regard to the misconduct. There is some gap in the evidence of MW 1 and WW 1 and further between the pleadings and the evidence. In the circumstances learned counsel for the petitioner bank submits that an opportunity may be provided to the petitioner to substantiate the charge before the labour court and that it is settled position of law that if there is no enquiry or a defective enquiry is conducted the management is to be provided with an opportunity to lead evidence before the labour court. In the instance case in the absence of evidence on record, I am of the opinion that the impugned award passed by the labour court is to be set aside and the matter requires to be remanded and no reasoning being assigned by the labour court on what basis compensation of Rs. 150000.00 is arrived at while allowing the writ petition set aside the said award dated 03.04.2007 and remanded the matter for fresh disposal in accordance with law after providing opportunities to both the parties within six months from the date of receipt of copy of the order.

6. The learned advocate for the I Party on 12.04.2013 when produced the copy of the order passed in WP No. 14471/2007 (L-TER) re-registering the reference in the original number when notice was issued to II Party Sh. K. Prabhakar Rao, advocate filed vakalat for the II Party and requested to grant time to lead evidence. The learned advocate appearing for the II Party on 29.07.2013 while filing the affidavit of Sh. Uday Narayan, former Assistant Manager of the Raichur Branch examined him on oath as MW 2 and got affirmed Ex. M-1 to Ex. M-15 which were exhibited earlier in the evidence of WW 1 by way of confrontation and since the learned advocate appearing for the I Party while cross-examining MW 2 made a submission that he has no further evidence to lead the matter was when posted for arguments counsel for I Party filed his written arguments and counsel for II Party addressed his oral arguments on 12.08.2013.

7. The contention of the II Party the I Party was being appointed as a Commission Agent under its Laghu Bachat Yojana Scheme on an agreement to pay commission on the deposits collected by him he is not a workman as defined under Section 2(s) of ID act do not now survive for consideration since the award passed by this tribunal dated 17.01.1994 on the sole ground that I Party cannot be a workman as defined under Section 2(s) of the ID Act being set aside by the Hon'ble High Court of Karnataka in WP No. 28637/1994 holding that Pigmy Agents are the workman as defined under Section 2(s) of the ID Act and moreover the Award passed by the Hyderabad Tribunal in the case of The workmen of Syndicate Bank and others vs. Indian Banks Association holding the Pigmy Agents as Workmen being upheld by the Hon'ble Supreme Court which is reported in AIR 2001 SC 946 the Pigmy Agents of various banks are workmen as defined under Section 2(s) of ID Act is a settled law. Moreover, having regard to the above position the learned advocate appearing for the II Party now having not urged this contention raised in the counter statement in my view the question whether I Party is a workman or not as defined under Section 2(s) of the ID Act does not now remain for consideration.

8. Since there is no dispute on the letter/application written by the I Party to the II Party dated Nil which is marked as Ex. M-1 he being appointed as Agent for collection of Laghu Bachat deposits under Laghu Bachat Yojana of the II Party as per Ex. M-2 and I Party giving his acceptance to the said offer of appointment as per Ex. M-3, in view of the specific contention of the II Party that the reference is bad for eight years delay in raising the dispute from the alleged date of his termination and that the I Party on complaints by the Pigmy Depositors agreed having misappropriated a sum of Rs. 21850.00 and abandoned the agency on his own and it has not terminated his agency the points that remains for consideration are:

Point No. 1: Whether the dispute raised by the I Party alleging his termination on 31.12.1983 after eight years in the year 1991 is maintainable?

Point No. 2: If yes, whether the II Party proved the I Party misappropriating a sum of Rs. 21850.00 collected by him from the Pigmy Account holders and on his own abandoning the agency and that it did not terminate his Agency?

Point No. 3: What order?

9. On appreciation of the pleadings, oral and documentary evidence placed on record by both the sides in the light of the arguments put forward for them my finding on Point No. 1 is in the Negative, Point No. 2 in the Affirmative and Point No. 3 as per the final order for the following

REASONS

10. **Point No. 1:** The I Party who claims in the claim statement suddenly the Laghu Bachat Yojana was temporarily stopped on 31.12.1983 by the II Party and then onwards he was not allowed to collect the deposits thereby he claims that his agency was terminated from 31.12.1983. Further, in Para 6 of the claim statement alleging he has approached the II Party since from the date of termination/ obstruction *i.e.,* 31.12.1983 to 15.02.1991 and requested for reinstatement into the service appears to be claiming that till 15.02.1991 he was requesting to reinstate him in service, but except his allegation in the claim statement and statement in his self swearing affidavit nothing is placed on record that from 31.12.1983 onwards till 15.02.1991 he was making request to reinstate/restore his agency, it is very hard to believe that he kept on making request from 31.12.1983 onwards till 15.02.1991 to reinstate him or to restore his agency. Though there is no specific provision restricting the period for raising the dispute in the ID act as held in the Division Bench decision of the Hon'ble High Court of Karnataka in the case of Telecom District Manager and others vs. A. A. Angali and others reported in AIR 2000 Kar 2963 relied on by the learned advocate appearing for the II Party because law does not prescribe any time limit for the appropriate government to exercise its power under Section 10 of the Act, it is not that this power can be exercised at any point of time and to revive matter which have since been settled, the relevant para in which decision reads as under "Law does not prescribe any time limit for the appropriate Government to exercise its power under Section of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years or order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would despond on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incoggruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising Industrial Dispute was *ex facie* bad and incompetent". In view of the above said decision it was for the I Party to explain the eight years delay in raising this dispute and as already adverted to by me above no proper explanation is being pleaded and proved except his bald statement in the claim statement and self swearing affidavit that till 15.02.1991 he kept on requesting to reinstate him in service, I have arrived at conclusion of answering this point in the Negative.

11. **Point No. 2:** In fact in view of my finding on Point No. 1 in the Negative the consideration of this point does not survive. However presuming that first point is answered in the affirmative *i.e.,* mere delay in raising the dispute is not fatal for the reference, let me now proceed to consider the aspect covered in the second point. It is borne out from the evidence recorded in this matter that I Party who examined himself on 27.11.1992 just affirmed what he has stated in his claim statement without any whisper about the allegations of misappropriation made against him. But in his cross-examination he who has admitted that he has studied upto SSLC can read and write in English and Kannada and also Ex M-4 is a letter written by him wherein he has stated that due to his ill-health he could not attend for daily collection as well as Ex M-6 and Ex M-7 wherein in his own handwriting he has written having misutilized a sum of Rs. 21850.00 collected from six months, to his convenience further states that he has only put his signatures to these letters. Further though he admits his signatures to the indemnity bond executed by him conveniently states that he has simply put his signature without knowing the contents therein. Further he also admits Ex M-10 and Ex M-11 bears the signature of himself and his brother and again to his convenience he claims that he signed them without understanding the contents there in. Though the I Party was aware of the Public Notice issued by the II Party in the Raichur Vani Daily dated 13.04.1984 having cautioned the public not to transact with him he having remained silent in his claim statement on this aspect and simply come forward in the cross-examination when these documents were confronted to him he having put his signatures without knowing contents which is unbelievable. In the background of this when it is contended one year prior to 1984 I Party stopped collecting the deposits and abandoned the agency it probabilizes the I Party having conveniently choosing date of termination by 31.12.1983. Under the circumstances, the I Party who unequivocally admitted through his letter at Ex Ex M-6 and Ex M-7 having misutilized an amount of Rs. 21850.00 collected from the Pigmy Account Holders as contended by the II Party must have abandoned his agency by around 31.12.1983 and by afterthought after eight years with an ulterior motive suppressing the real facts raised this dispute

for wrongful gain is probable and acceptable. In the result, I have arrived at conclusion of answering this point in the affirmative.

12. **Point No. 3:** In view of my finding on Point No. 1 and 2 the reference is liable to be Rejected on the ground that the I Party who misappropriated a sum of Rs. 21850.00 collected from the Pigmy Account Holders on his own having abandoned the agency and is not terminated by the II Party with an after thought after eight years having raised this dispute without properly explaining the delay is not entitled for any of the reliefs claimed by him. Hence, I pass the following

ORDER

The Reference is Rejected holding that the I Party having misappropriating a sum of Rs. 21850.00 collected from the Pigmy Account Holders on his own having abandoned the agency and is not terminated by the II Party is not entitle for any relief.

(Dictated to U.D.C. transcribed by him, corrected and signed by me on 18th September, 2013)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 916.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार तमिलनाडु मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 84/2009) प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-29011/107/2002-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2009) the the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tamil Nadu Minerals Limited and their workman, which was received by the Central Government on 17/2/2014.

[No. L-29011/107/2002-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 16th January, 2014

PRESENT: K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 84/2009

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Tamil Nadu Minerals Ltd. and their workmen)

BETWEEN

The General Secretary : Ist Party/Petitioner Union
Salem Mavatta Kanima Niruvana Uzhiyar
Sangam, CITU Office
Rajaganapathy Nagar
Mettur Dam-646401

AND

The Chairman-cum- : 2nd Party Respondent
Managing Director
Tamil Nadu Minerals Ltd.
Kamarajar Salai, Chepauk
Chennai-5.

APPEARANCE :

For the 1st Party/ Petitioner Union	:	M/s. V. Ajoy Khose & S. Manoharan, Advocates
For the 2nd Party/ Management	:	M/s S. Sekar, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-29011/107/2002-IR(M) dated 12-13/11/2009 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the demand of the Salem Mavatta Kanima Niruvana Uzhiyar Sangam (CITU) apart from Bonus for all the employees irrespective of the ceiling prescribed under the Payment of Bonus Act, 1965, an ex-gratia of 25% for the year 2001-2002 is just and legal? What relief the workmen concerned are entitled to?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 84/2009 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed claim and counter statements respectively.

3. The averments in the Claim Statement in brief are as below:

The First Party is a Trade Union Under the Trade Union's Act and is espousing the cause of workmen employed by the 2nd Party which is a Company wholly owned by the Government of Tamil Nadu. It is making huge profit every year by exporting black granite stones to various countries. The second Party was able to earn such profit only because of the hard work of its workmen. The First party had demanded 25% bonus and ex=gratia to all the employees

of the Second Party for the year 2001-2002 without reference to salary ceiling or the maximum limit for payment of bunus. Since the Second Party did not call the First party for talks the dispute has been raised by the First Party. The Tamil Nadu Govt. had issued separate orders for the workers employed in Tamil Nadu Electricity Board. State owned Transport Corporations. Civil Supplies Corporations, etc. and directed that bonus is payable to all workers whose wages are regulated through wage settlements without any reference to the salary ceiling of Rs. 3.500/- as provided in the Payment of Bonus Act. The workers employed by the Second Party are paid wages on the basis of wage settlements like transport workers, etc. The action of the Second Party is not extending 25% bonus and ex-gratia to the workmen for the year 2001-2002 is unjustified and illegal. The Second Party shall be directed to pay bonus @ 20% and ex-gratia of 5% without reference to salary ceiling, with interest.

4. The Second Party has filed Counter Statement contending as follows:

The Second Party is a government company carrying on mining operation in various parts of the State. The Second Party being one of the Govt. undertakings, payment of bonus will have to be made as per the Payment of Bonus Act and in accordance with the State Government orders. Accordingly, the Second Party had sanctioned bonus to all eligible workers at the maximum rate of 20% of their salary as per Payment of Bonus Act for the year 2001-2002. The Govt. has clarified by order No. 349 dated 22.10.2002 that the order of the governemnt for payment of bonus will not be applicable to transport corporations, electricity boards, civil supply corporations, etc. The First Party cannot claim bonus on par with the above corporations. There is no provision to sanction ex-gratia payment where maximum 20% bonus was declared. The Second Party has sanctioned bonus for the year 2001-2002 to all eligible workers whose salary or wages did not exceed Rs. 3,500/- per month at the maximum rate of 20%. The First Party is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext. W1 to Ex.W12 and Ext.M1 to Ex.M6.

6. **The points for consideration are :**

(i) Whether the employees of the 2nd Respondent are entitled to bonus for the year 2001-2002 irrespective of the ceiling prescribed under the Payment of Bonus Act and Ex-Gratia payment of 5% ?

(ii) What is the relief to which the concerned workmen are entitled?

The Points

7. The only claim of the First Party, the workers union representing the workers of the Second Party is that for the year 2001--2002, the workers are entitled to Bonus without reference to the salary ceiling and that the Second Party should be directed to pay bonus to all its employees @ 20% and ex-gratia of 5% without reference to salary ceiling and maximum ceiling. The First Pary has written Ex.W1 letter to the Second Party making the demand of bonus and ex-gratia for the year 2001-2002 without reference to the ceiling limit prescribed on the salary. Since this has been turned down the industrial Dispute was raised by the First Party.

8. The stand of the Second Party is that it being one of the Govt. Undertakings bonus is payable as per the provisions of Payment of Bonus Act and in accordance with the State Govt. orders. It is stated by the Second Party that it has sanctioned bonus for the year 2001-2002 to all the eligible workers @ 20% of their salary as per the Payment of Bonus Act. It is stated in the Counter Statement of the Second Party that though apart from the First Party Union other unions representing the workers also had made the same claim, they have subsequently withdrawn the claim when the factual position was explained to them.

9. There is no dispute for the First Party that the workers have received bonus as per the Bonus Act and on the basis of the order of the Government.

10. The counsel for the First Party has stated in the notes of arguments submitted that earlier the Govt. of Tamil Nadu used to issue orders for Payment of Bonus not based on any profit or productivity. It is also stated that though salary ceiling is fixed under Section-2(13) of Payment of Bonus Act, the Govt. used to issue orders to pay bonus to all the employees without reference to the salary ceiling fixed under Secton-2(13) of Payment of Bonus Act. However, no such previous orders are produced on behalf of the First Party. According to the counsel though during the year 2001-2002 the salary ceiling was Rs. 3,500/- in the year 2007 the salary ceiling was increased to Rs. 10,000/- with effect from 01.04.2006. The argument of the counsel is that as per the practice, though the workmen have been getting more than Rs. 3,500/- per month as salary, during the year 2001-2002, they should be paid bonus as if their salary was Rs. 3,500/- or below.

11. The above submission of the counsel itself would show that during the year 2001-2002, the employees who obtained more than Rs. 3,500/- as salary, are not eligible for bonus under the Act and under the order. Merely because subsequently, in the year 2007, the salary ceiling has been raised, the First Party now cannot contend that they were entitled to bunus irrespective of the ceiling fixed for the year 2001-2002.

12. One contention that is raised in the Claim Statement is that the Govt. has issued separate orders for the workers employed in the Electricity Board. Transport Corporations, Civil Supplies Corporations, etc. and directed that bonus be paid to those workers whose wages are regulated through

wage settlements without any reference to the salary ceiling of Rs. 3,500/-. It seems the Government by order dated 22.10.2002 has made it clear that except the above three corporations, the employees of all other corporations or undertaking of the Tamil Nadu Govt. shall be strictly governed only by the Payment of Bonus Act. Thus it is clear that for the workers including the workers of the Second Party, bonus was payable only if they came within the prescribed salary ceiling. Those workers who are eligible have already received their bonus and ex-gratia. There is no substance in the claim advanced by the First Party. I find that the First Party is not entitled to any relief.

13. In view of my discussion above, the reference is answered against the First Party.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th January, 2014).

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the Ist Party/Petitioner : WW1, Sri K. Vijayan

For the 2nd Party/ Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	26.09.2002	Demands given by the Ist party Union to the 2nd Party
Ex.W2	24.10.2002	First Party letter the Conciliation Officer
Ex.W3	22.10.2002	G.O. Ms. No. 214 issued by Transport Department
Ex.W4	24.10.2002	(Per) B.P. (Ch) No. 212 issued by TNEB
Ex.W5	20.10.2003	G.O. Ms. No. 127 issued by Transport Department
Ex.W6	17.10.2006	B.P. (Ch).No. 207 issued by TNEB
Ex.W7	20.11.2002	Failure report
Ex.W8	09.04.2003	Declined the refer the dispute for adjudication
Ex.W9	15.05.2003	First party letter to the Government to reconsider the Matter.
Ex.W10	07.08.2009	Order in WP No. 20435/2003
Ex.W11	12.11.2009	Reference for adjudication
Ex.W12	1995 to 2002	Balance Sheet of TAMIN

On the Management's side

Ex.No.	Date	Description
Ex.M1	26.09.2002	Letter from the Salem Mavatta Kanima Niruvana Uzhiyar Sangam (CITU).
Ex.M2	22.10.2002	G.O. No. 349 Finance (BPE) Department
ExM3	31.10.2002	Tamilnadu Dessiya Minerals Paniyalar Sangam (INTUC)
Ex.M4	11.11.2002	Leter No. 25262/MME2/21002-2 from the Industries (MME2) Department
Ex.M5	09.04.2003	Letter No. L-29011/107/2002-IR(M) from the Under Secretary, Government of India, Ministry of Labour, New Delhi
Ex.M6	09.12.2002	Letter No. 24292/IRI/2002 addressed to the Secretary to Government of India, Ministry of Labour, New Delhi.

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 150/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-11011/8/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 150/2011) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 17/2/2014.

[No. L-11011/8/2008-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 150/2011

The All India President,
AAI Mazdoor Sangh,
Flat No. 166, DDA-SFS Flats,
Sector-I, Dwarka,
New Delhi-110075 ....Workman

Versus

The Chairman,
Airport Authority of India,
A Block, Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi-110092. ....Management

AWARD

Airport Authority of India (in short the Authority) was created in 1994 by an Act of Parliament by way of merger of erstwhile International Airports Authority of India and National Airports Authority. After merger of aforesaid two authorities and creation of the Authority an expert committee was set up to evolve principals of integration of seniority and other related issues of employees of the Authority. Recommendation of the said committee was partly implemented by the Authority. Various committees were constituted thereafter to frame common recruitment and promotion guidelines. Steps were taken by the Authority to restructure cadres of its employees, to remove discrepancies and anomalies in pay structure and provide better promotion avenues.

2. The Authority negotiates with a recognized union to carve out better wages and benefit structures for its employees. In order to grant recognition to a union, election by secret ballot is conducted. Election by secret ballot was held on 23.10.2002 to determine majority character of a union as a sole bargaining agent. The Airports Authoirty Employees Union (hereinafter referred to as the union) was declared as a majority union and recognition was granted to it by the Authority, for a period of five years. In the year 2007 too the union obtained majority votes in secret ballot election. The Airport Authority of India Mazdoor Sangh (hereinafter referred to as the sangh) lost the aforesaid two elections. The Authority did not allow the sangh to represent entire body of workmen, when steps were taken to formulate wage and benefit structures for its employees. Knowing well that it had no numerical support, the sangh raised a dispute before the Concillation Officer, relating to relaxation in qualification and trade test while filling vacancies by way of promotion from amongst the employees of the Authority in consonance with recruitment and promotion rules and memorandum of understanding arrived at between the Authority and the union. Since the Authority contested the claim as well as right of the sangh to raise policy issues in resident entire body of workmen, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to the Central Govt. Industrial Tribunal No. 2, New Delhi, for adjudication, vide order No. L-11011/8/2008-IR(M), New Delhi dated 15.04.2009, with following terms:

"Whether the demand of the union regarding relaxation in qualification, trade test while filling up the vacancies on seniority basis a incorporated in R & P and MOU is just and legal? What relief is the union entitled to and from which date?"

3. Corrigendum was issued by the appropriate Govt. vide order No. L-110011/8/2008-IR(M) New Delhi dated 5.10.2009 substituting All India President of the sangh as party to the dispute instead of the Vice President of the sangh.

4. Claim statement was filed on behalf of the sangh pleading therein that it is a trade union regisgered under the Trade Union Act, 1926 and as such has a right to raise dispute, which affects the workmen. It has been claimed that the Industrial disputes Act 1947 (in short the Act) does not prohibit the sangh from raising a dispute which affects rights of the workmen. The sangh pleads that the Authority had issued order for restructuring of various cadres of Ministerial, stenographic, housekeeping and Airport Hostess etc. in the ratio of 4:3:3, vide letter dated 23.06.2005. In the said order clusters have not been introduced so far except in the cadre of fire and motor transport discipline. The Authority has prescribed educational qualification as graduate with two year relevant experience in cargo, electronics, Hindi, material management, operation and personnel discipline for direct recruitment to the post of Assistant (N.E.5 scale), a base level post of group C in pre-revised scale, which adversely affects promotional avenues of group D employees for that post. Two years relevant experience, in the field of ATC, Civil, CP&MS, electrical, economics, finance, Hindi, land management, law, medical, material management, motor transport, operational, personnel, public relation and housekeeping disciplines was prescribed for the post of Senior Assistant (N.E.6 scale) which adversely affects promotional avenues of group D employees. Educational qualification of engineering degree or graduate with post graduate diploma, in ATM, comunication, civil, electrical, equipment/technical, information technology, architecture, airport operation, personnel, law, public relatin, economic planning, finance, commercial land management, cargo, housekeeping, horticulture, fire, cartography and electronics disciplines was prescribed for the post of Junior Executive (E-1 scale) which also adversely affects promotional avenues of group C employees. Above educational qualification and experience for the posts, referred above, were subsequently incorporated in Recruitment and Promotion Guidelines 2005. The Authority issued letter dated 15.03.2007 and asserted that restructuring was made subject to the conditions incorporated in Recruitment and Promotion Guidelines. It emerged that no relaxation in qualification and trade test was to be given to the employees. The Aurhority discriminated the employees in the cadres like engineering motor transport, E&M and fire etc. and thus grossly violated the provisions of Articles 14 of the Constitution of India. Benefit of exemption from passing trade test/ written examination has been provided to ministerial cadre vide letter dated 4/6.10.2005.

5. The sangh pleads that the Authority had ignored cause of weaker sections and largely affected various cadres in group D when it issued orders from restructuring of various cadres in ministerial, stenographic, housekeeping, airport hostess, engineering, motor transport, E&M, and fire etc. Though the employees, covered under restructuring orders dated 27.4.2006, 15.3.2007 and 31.5.2007, get equal wages, allowances, overtime allowance and perks etc. with the employees of ministerial cadres but their hours of work, weekly off and holidays are different than the employees of ministerial cadres. Job specifications for employees working in various cadres of engineering, motor transport, E&M and fire etc. have not been formulated by the Authority, which make them to perform similar nature of work as performed by employees of superior categories. The Authority has approved common recruitment and promotion regulations for executives and non-executives without giving notice, as required under section 9-A of the Act, since increase in qualification and addition of criteria of passing trade test amount of change in their service conditions. Erstwhile employees of civil aviation department, absorbed in the service of the National Airport Authority, were also brought under the purview of common recruitment and promotion regulations, without formulating any training capsule for them. In recruitment and promotion regulations process of supersession has been restored, which is against the policy of the Government of India.

6. The sangh project that the Authority had arbitrarily chosen two different dates of implementation for restructuring of cadres, one for ministerial, stenographic, housekeeping and airport hostess while the other for engineering, motor transport, E&M, and fire discipline etc. This way the Authority has discriminated employees of group C and D, who are largely affected. Discriminatory restructuring policy of the Authority had caused resentment amongst a large section of workmen. The Authority had not allowed the sangh to present its views on restricting policy, referred above. The sangh has a right to represent its members before the Authority, in respect of recruitment and promotion policy formation. The sangh claims that the Authority may be commanded to grant relaxation in qualification and trade test while filling up vacancies on seniority basis, pursuant to recruitment and promotion regulation and memorandum of understanding arrived at between the Authority and the union.

7. The claim was demurred by the Authority pleading that the sangh is not competent to challenge policy decision, regarding recruitment and promotion regulations, framed by it. The sangh had lost election by secret ballot, held in the year 2002 and 2007, for grant of majority status to a union. The sangh is an unrecognized union, not competent to raise an industrial dispute on issues relating to general employees, which has been settled by way of negotiation with the union. The Authority pleads that group D employees has not been adversely affected by its recruitment and promotion policies. On the contrary posts for promotion have been increased. Age relaxation has also been granted to them. Their career growth has been increased. The Authority asserts that a committee was constituted for restructuring of cadres and removal of anomalies in ministerial, stenographic, housekeeping cadres and upgradation of employee in higher scales w.e.f. 1.4.96. The committee recommended restructuring of four cadres in the ratio of 40:30:20 in N.E. 5, N.E. 6, N.E. 8 and N.E. 9 scales. Induction level in N.E. 6 scale was in the ratio of 60:40 in both the divisions except the engineering cadres. An Anomaly Committee was constituted vide order dated 05.07.2005. In its report dated 07.12.2005 the committee opined that date of implementation may be decided by the Authority. Accordingly the Authority decided to implement the report of the committee w.e.f. 01.08.2001 since memorandum of understanding was signed by the Authority with the union on 21.07.2001.

8. The Authority pleads that keeping in view that orders forming clusters were issued for certain categories like motor transport, fire and engineering etc., hence it was decided that the employees would be required to obtain competency certificate/pass trade test where required on the current date. However benefit of passing such trade test/competency certificate was to be given from retrospective date, the date from which official became eligible for promotion under the proposed restructuring policy. Where an employee has already been given FCS benefit in any particular post/cluster, it was held to be personal to him. Dual benefit under FCS and restructuring policy was not admissible to an employee. Matter of implementation of restructuring of engineering cadres was approved for rationalization w.e.f. 01.01.1997, subject to implementation of recruitment and promotion guidelines. No relaxation in qualification and trade test was to be given. No discrimination of any sort was made in that regard.

9. The Authority projects that prior to implementation of restructuring of various cadres in ministerial, stenographic, housekeeping, airport hostess and various cadres of engineering, motor transport, E&M and fire etc. 40% posts in all group D, in pre-revised scale of Rs. 2400-3330, were upgraded to next pre-revised scale of Rs. 2550-3660 to remove stagnation. Qualified group D employees in N.E. 3 scale possessing requisite qualification would be given opportunity for appointment to N.E. 4 scale against 20% vacancies to be filled by direct recruitment, subject to qualifying written/trade test. Further group D employees in N.E. 3 scale are eligible for placement in N.E. 4 scale on grant of selection grade on completion of 6 years service. Promotion under FCS is entirely different from regular promotion. Persons promoted against FCS scheme have to carry out same duties and functions, which were performed by him earlier to the promotion. There are no reasons for imparting any specific training capsule to the employees

of the Authority, on being implementation of promotional and recruitment policy. Recruitment and promotion policy, which has been implemented in the best interest of the organization provide better career opportunities to all employees working with the Authority.

10. Restructuring benefits have been extended to ministerial, stenographic, housekeeping and air hostess discipline retrospectively w.e.f. 01.04.1996 notionally. Financial benefits have been extended to them w.e.f. 23.6.2005. Restructuring benefits to engineering, E&M, fire and motor transport disciplines etc. have been extended w.e.f. 01.01.1997 notionally on the recommendation of another committee and financial benefits have been released in their favour w.e.f. 27.4.2006. No discrimination was done while granting benefits to the employees of the above cadres. Group D employees have not been ignored in their upgradations. Career progression for them is provided under recruitment and promotion regulations. Employees in N.E. 8 and N.E. 9 scales have been granted benefits under FCS as well as promotion on regular basis, subject to meeting eligibility criteria and seniority. Inequalities in various cadres have been removed. The Authority pleads that relaxation in qualification and trade test, to fill up vacancies in various cadres, have been done to provide career growth to employees working in various grades. The dispute raised by the sangh is not legally tenable. It has been claimed that the claim put forward by the sangh may be dismissed, being devoid of merits.

11. Vide order No. Z-22019/6/2007-IR(C-II) New Delhi dated 30.03.2011 the case was transferred to this Tribunal for adjudication by the appropriate Government.

12. To discharge onus resting on the sangh, Shri Harinder Tiwari entered the witness box. With the permission of the Tribunal he testified facts again with a view to adduce additional evidence. Shri V.B. Sharma, Senior Manager, was brought in the witness box by the Authority. His cross examination remained incomplete and he was never produced again to face rigors of cross examination. Since effective opportunity was not given to the sangh to purify testimony of Shri Sharma by an ordeal of cross examination, hence his testimony cannot be read in the matter. Shri Balbir Singh, General Manager, was also examined on behalf of the Authority. No other witness was examined by either of the parties.

13. None came forward on behalf of the sangh to advance arguments. Ms. Sujata Kashyap, authorised representative, advanced arguments on behalf of the Authority. Written submissions were also filed by the Authority. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

14. At the outset Ms. Kashyap argued that the sangh lost secret ballot elections, conducted for determination of majority status of the union. In referendum held in the year 2002 and 2007, the sangh lost elections. The union won elections in the year 2002 and 2007. The union was declared as a sole bargaining agent and the Authority granted recognition to the union, to raise all issues relating to its general employees. The Authority had discussed issues relating to general employees and signed memorandum of understanding with the union. Ms. Kashyap argued that the sangh has no right to raise policy issues, relating to service conditions of general employees of the Authority.

15. In his testimony Shri Harinder Tiwari made a candid admission that in the year 2002 the sangh lost secret ballot election, conducted to determine majority status of a union, for grant of recognition as a sole bargaining agent on behalf of general employees of the Authority. He could not dispute that in the year 2007 too the sangh lost referendum conducted for election of a union as sole bargaining agent to represent general employees of the Authority. Out of facts conceded by Shri Harinder Tiwari it became evident that the sangh lost elections twice and could not attain majority status for recognition as a sole bargaining agent to raise issues relating to service conditions of general employees of the Authority.

16. Whether the sangh, which is an unrecognized union, can raise issues of policy, relating to service conditions of general employees of the Authority? For an answer to this proposition law laid by the Apex Court in Food Corporation of India case [1995 (71) FLR 278] is to be taken note of. In that case Food Corporation of India and the unions, representing the workmen in the establishment of Food Corporation of India, have agreed to follow "secret ballot system" for assessing the representative character of the trade unions. The Apex Court laid down as to how the method of secret ballot should be tailored to yield correct results. The Court ruled therein that the union/unions obtaining the highest numbers of votes in the process of election shall be given recognition by the Food Corporation of India for a period of five years, from the date of conferment of the recognition.

17. In All Orissa State Bank Officers case [1999 (1) DLR 271], Orissa High Court rules that a recognized union, who has numerical support to represent and to speak on behalf of all workmen, has a right to represent the entire body of workmen. An unrecognized union has no right to represent the entire body of the workmen, but it may speak for or represent workmen, who are its members individually or as a group. In case of any conflict between demands of recognized union and demand of an unrecognized union the management can accept views of the recognized union but the management cannot deny or refuse to entertain any representation from or to enter into any dialogue or discussion with an unrecognized union in respect of grievances of any individual workman or a group of workmen belonging to the unrecognized union. Relying on the precedent in Balmer Lawrie Workers Union (AIR 1985 SC 311) the High Court ruled that acceptance of a

demand on discussion over a demand is not the one and the same thing. Right of raising grievance and discussion is a fundamental right, which cannot be taken away totally. The High Court noted observation of the Apex Court in the precedent, referred above, with profit, which observations are extracted thus:

"....Forming an Association is entirely independent different from its recognition. Recognition of a union confers rights, duties and obligations. Non-conferring of such rights, duties and obligations on a union other than the recognized union does not put it in an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association.

The Legislature has in fact taken note of the existing phenomenon in trade unions where there would be unions claiming to represent workmen in an undertaking or industry other than recognized union. Section 22 of 1971 Act confers some specific rights on such non-recognised unions, one such being the right to meet and discuss with the employer the grievances of individual workman. The Legislature has made a clear distinction between individual dispute affecting all or a large number of workmen. In the case of even an unrecognized union it enjoys the statutory right to meet and discuss the grievance of an individual workman with the employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an unrecognized union. The exclusion is partial and the embargo on such unrecognized union or individual workman to represent workmen is in the large interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Art. 19(1)(a) or 19(1)(c) of the Constitution."

18. As emerge out of the law laid above, an unrecognized union is not entitled to be treated at par with a recognized union. The Authority cannot indulge in any kind of undue discrimination, to take sides and indulge in any activity designed to harass or disrupt one union and to promote another union. It cannot deliberately pursue a policy designed to create a situation which makes fundamental right of formation of an association and freedom of expression nugatory or illusionary. The Authority has certain discretion in and while exercising such discretion, it has to act fairly, honestly and in the interest of the organization, without violating the fundamental rights and/or other statutory rights of the employees or the sangh. The Authority should be careful to ensure that none of its act amounts to oppression of the sangh nor its members at the instance or under undue pressure of the union.

19. Whether the sangh has been able to project that the Authority had failed to recognize its statutory rights? In his affidavits Ex.WW1/A and Ex.WW1/B, Shri Harinder Tiwari raises issues affecting entire body of the workmen, working in the establishment of the Authority. He does not raise an individual dispute. It has not been asserted in affidavits that the sangh tried to meet and discuss grievances of an individual workman or group of workmen with the Authority. In these two affidavits, Shri Tiwari nowhere claims to assert a statutory right to appear and participate in domestic enquiry in which member(s) of the sangh is/are involved. There is an embargo on the sangh to represent entire body of workmen, in the establishment of the Authority, in large interest of the industry, public interest and national interest. The sangh has not been able to project that the Authority has accorded undue benefit to the union. No case has been brought to light that the Authority deliberately pursued a policy to curtail fundamental right of formation of an association. No instances have been brought to light to give an inference that the Authority indulged in any activity designed to harass or disrupt the sangh and to promote the union. The sangh had failed to establish that by way of negotiation of the union for formation of policy of restructuring service conditions for general employees, the Authority has not acted fairly, honestly and in the interest of the organization. The sangh could not project that the Authority acted in an arbitrary and unreasonable or unfair manner or exercised power in a colourable manner, when it restructured wage and other benefits for its employees. Therefore, it is evident that the sangh has not been able to project a case to strike down policy of the Authority, when it restructured wage and other benefits for its general employees. The sangh could not point out any statutory right to raise a dispute, in respect of memorandum of understanding arrived at between the Authority and the union, which reshapes wage and benefits for general employees. I am of the considered opinion that the sangh has no right to raise the dispute for adjudication.

20. How a dispute affecting an employee or a group of employees can be raised? For an answer provisions of the Act are to be construed. The appropriate Government, on being satisfied that an industrial dispute exists or is apprehended, may refer it to an Industrial Tribunal for adjudication, enacts clause (d) of sub-section (I) of section 10 of the Act. Therefore, the appropriate Government has to satisfy that an industrial dispute exists or apprehended between the workmen and their employer. Consequently, definition of the word "industrial dispute" is to be appreciated. Clause (k) of section 2 of the Act defines the word "industrial dispute" in the following manner.

"(k) industrial dispute means any dispute for difference between the employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-

employment or the terms of employment or with the conditions of labour, of any persons".

21. The definition of the work "industrial dispute" referred above can be divided into four parts viz. (i) factum of dispute, (ii) parties to the dispute, viz (a) employers and employers, (b) employers and employees or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with (i) employment or non-employment , or (ii) terms of employment, or (iii) conditions of labour of any person, and (iv) it should relate to an "industry".

22. The definition of the word "industrial dispute" is worded in wide terms and unless it is narrowed by the meaning given to the word "workman" it would seem to include all "employers", "all employments" and all "workmen" whatever nature of the scope of the employment may be. Therefore except in the case where there can be dispute between the employer and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workman, the plural may include singular on either side, or any permutation of singular, the mesculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "industrial dispute" or not it must be determined whether the workman concerned or workmen sponsoring his case satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, there is no dispute that the employers of the group "C" and "D" working in the establishment of the Authority are workmen within the meaning of clause (s) of section 2 of the Act.

23. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660] Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non-employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was adopted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union, which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

24. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court rule as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Drona Kuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

25. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider

the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

26. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "Industrial dispute".

27. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affected the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (II) 256].

28. Above propositions relate to a dispute affecting an individual or a group of workmen, who may be members of the sangh. However, a dispute relating to rights of entire body of workmen is placed on different pedestal than a dispute affecting an individual or a group of workmen, who may be members of an unrecognized union. As pointed out above, an unrecognized union has no right to represent entire body of the workmen. In the dispute under reference, the sangh cannot raise a dispute relating to its right to speak for or represent entire body of workmen. It is not a case, wherein the sangh wants to have a dialogue in respect of grievances of any individual workman or a group of workmen belonging to it. Acceptance of a demand, raised by the union and discussion over it is not one and the same thing. The sangh cannot raise a demand with a view to represent entire body of workmen. Thus, it is evident that the sangh has no right to raise the dispute. It emerge out of the records that the sangh had acted with a view to pursue its election strategy for referendum to be held in the year 2012.

29. Memorandum of Understanding, proved as Ex.MW2/W2, was arrived at between the Authority and two unions pursuant to orders passed by a civil court. Memorandum of Understanding dated 31.07.2001 was arrived at on wage revision. Order dated 13.08.2001 was issued pursuant to the said Memorandum of Understanding. Memorandum of Understanding was again arrived at between the Authority and the union in the year 2005. Restructuring of various cadres of ministerial, stenographic, housekeeping, airport hostess, engineering, motor transport, E&M and fire etc. disciplines were done by the Authority pursuant to above Memorandum of Understanding entered into between it and the union. FCS Schemes were also part of recruitment and promotion guidelines, issued by the Authority, pursuant to settlements between it and the union. Therefore, decisions taken by the Authority in restructuring policy were in consonance with the settlements so arrived at between the union and the Authority. Recruitment and Promotion Regulations 2005, clarification issued to those regulations in the year 2008 and pay fixation benefits granted in February 2012 were also part of the aforesaid settlement and Memorandum of Understanding arrived between the Authority and the union.

30. In view of foregoing discussions, it is evident that the sangh has no right to raise issues in respect of policy decisions relating to wage structure and other benefits, taken by the Authority pursuant to settlements arrived at between the Authority and the union. The sangh cannot raise a demand seeking relaxation in qualification and trade test while filling up of vacancies on seniority basis, as incorporated in Recruitment and Promotion Guidelines 2005

and Memorandum of Understanding arrived at between the Authority and the union. Claim put forward by the sangh was a part of its election strategy. When the sangh lost referendum in December 2012, it opted to abandon the proceedings. These facts make it apparent that the dispute was raised by the sangh with a view to persuade body of workmen as a class to grant numerical support to it in referendum held in December 2012. Except the said election strategy, the sangh knew that it has no right to raise such a dispute. The claim put forward by the sangh has no legal basis, hence liable to be discarded. Claim statement, put forward by the sangh is hereby brushed aside. An award is passed in favour of the Authority and against the sangh. It be sent to the appropriate Government for publication.

Dated: 20.01.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 918.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत पेट्रोलियम कारपोरेशन लिमिटेड (रेफाइनरी) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुम्बई के पंचाट (संदर्भ संख्या 63/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-30012/15/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 63/2010) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 17/2/2014.

[No. L-30012/15/2010-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/63 of 2010

Employers in Relation to the Management of Bharat Petroleum Corporation Ltd.

The General Manager (HR)
BPCL (Refinery)
Mahul, Chembur
Mumbai-400 074

And

Their Workmen
Shri Gulab Genu Gadankush
Mangal Kalash Complex
Mangal Deep Society
A-Type, A-Wing, Room No. 105
MIDC Road, Cholegaon
Thakurley (E)
Distt. Thane-421 201

Appearances:

For the Employer : Mr. R.S. Pai, Advocate.

For the Workmen : Mr. J.H. Sawant, Advocate

Mumbai, dated the 11th March, 2013.

AWARD Part-I

The Government of India, Ministry of Labour & Employment by its Order No. L-30012/15/2010-IR (M), dated 16.11.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of BPCL, Mahul dismissing Shri Gulab Genu Gadankush w.e.f. 18/6/2009 is legal and justified? To what relief the workman is entitled?"

2. After receipt of reference from Ministry, notices were issued to both the parties. In response to the notice, the second party workman has filed his statement of claim at Ex-7. According to him he was permanent employee of first party working in a capacity of General Operative. The first party by order dated 29/12/2008 suspended the scond party alleging falsely that on 23/12/2008 at about 13.20 hours they observed the second party was found in compromising position and indulging in unnatural sex with a dog publicly on the first floor terrace behind Ruby Hall in Learning Centre. The first party served the second party with charge-sheet dated 14/01/2009 repeating the same allegations made in the suspension order. It is alleged that two employees have witnessed the incident. The second party has denied the charges by his reply dated 21/01/2009. At the instance of the officers of the first party the workman was implicated falsely in the case. The Inquiry Officer conducted the inquiry in English. The second party was not acquainted with English language. One of the office bearers of the union who was not trained in handling departmental inquiry properly was made available to defend the second party as his defence representative. He has not represented the second party properly. He asked some unwanted questions to the witnesses in their cross examination. The second party in his evidence has stated the truth that he was

suffering from illness and he has undergone bypass surgery and a value has been fitted in his heart. He was taking treatment for his swollen legs on 13/12/2008. On 13/12/2008 after lunch he went to the terrace and he was applying ointment on the boils on his legs. He was alone and there was no dog. He returned to the office and attended his work of delivering letters etc. Being heart patient, he cannot indulge in sex activities as has been alleged. The incident is totally fabricated. The witnesses of second party also deposed before IO that the allegations made against the second party are not true. The members of the family of second party are much disturbed due to the allegations and inquiry against the workman. The inquiry was not fair and proper. The IO has not considered the evidence on record. His findings are perverse. On the basis of report of the IO, the second party workman was dismissed from service. The Appellate Authority failed and ignored to consider the submission of second party and he mechanically confirmed the order of the Disciplinary authority. Therefore the second party raised industrial dispute. It was not settled. Therefore on the basis of the report of the ALC (C) the Labour Ministry has sent the reference to this Tribunal. The workman therefore prays that order of dismissal be set aside and first party be directed to reinstate him with full back-wages and also prays for heavy cost and compensation from the first party.

3. The first party resisted the statement of claim vide its written statement at Ex-8. According to them, the second party workman was suspended as he was found indulging in unnatural sex with a dog. The charge was framed against the workman for the same incident and disorderly indecent behaviour in the premises of the company. On the report of other employee Mr. S.P. Gharat the action was taken against the workman. Two other employees have also witnessed the incident. Therefore charge was framed against the workman. Inquiry Officer explained the charge to the workman. IO has conducted the inquiry in Marathi. However he has written the proceeding in English. The workman was represented by Vice President of the Union who has represented number of employees in the departmental inquiry. He is quite experienced person. Fair and proper opportunity was given to the workman in the inquiry proceeding. All the witnesses were cross examined by the defence representative. Opportunity was also given to the workman to lead his evidence. After considering the evidence on record the inquiry officer found the workman guilty. His findings are based on evidence on record and they are not perverse. He has submitted his report to the disciplinary authority. Copy thereof was given to the workman. The disciplinary authority perused the report of the IO, also considered the explanation of the workman and thereafter looking into the seriousness of the mischief the workman was dismissed from services. The IO has followed the proper procedure. Fair and sufficient opportunity was given to the workman to defend himself. Therefore neither inquiry can be called unfair nor the findings of the IO can be called perverse. Therefore, the first party prays that the reference be rejected.

4. Issues are framed at Ex-9. In this Part-I Award following are the preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry conducted by management of BPCL, Mahul against the second party workman was fair and proper?	Yes.
2.	Whether the findings of IO are perverse?	Yes.

REASONS

Issue No. 1:—

5. The first party has examined the Inquiry Officer, Chetan Prabhu at Ex-12. According to him, he is practising advocate and was appointed as Inquiry Officer by the first party company. He has proved the inquiry procedings. It is at Ex-13 collectively. In this respect the fact is not disputed that the second party workman was defended by Mr. M.S. Masavkar who was Vice President of the Union. According to the first party Mr. Masavkar was appointed as per the choice of the workman. According to them he had conducted number of inquiries and was an experienced person. As defence representative must have been appointed as per the choice of the workman, now neither workman can be allowed to blame his defence representative nor inquiry can be called unfair on that ground. Furthermore the Ld. Adv. of the second party has not pointed out any untoward question or unwanted action on the part of defence representative.

6. The main grievance on behalf of the second party was that, the management has not appointed any officer of the company as Inquiry Officer. On the other hand they have appointed a practising advocate as an Inquiry Officer. The company has paid him his professional fees. Therefore according to him the inquiry is not fair and proper. In this respect the Ld. Adv. for the first party submitted that, though the IO is a practising advocate he had no reason to be bias against the workman. The Ld. Adv. for the first party further submitted that, though IO is a practising advocate, he is not their lawyer. He further submitted that even lawyer of the company also can be appointed as IO and such inquiry can be held fair and proper. In support of his argument the Ld. Adv. resorted to Apex Court ruling in Saran Motors Pvt. Ltd. V/s. Vishwanath & Anr. FJR in Civil Appeal No. 755 and 756 of 1963 decided on 31.3.1964. Wherein the Hon'ble Court on the point observed that;

"Therefore it would be unsound to take the view that a lawyer who is not a paid officer of the employer is

incompetent to hold such an inquiry because he is employer's lawyer and is paid remuneration for holding the inquiry."

On the point Ld. Adv. for the first party also resorted to Kerala High Court ruling in N. Rarichan V/s. R.K. Venu Nair & Anr. 1973 LAB I.C. 536 (V 6 C 123) (Kerala High Court) wherein the Hon'ble Court in para 9 of the judgement observed that;

"Inquiry is not vitiated on the ground that it is conducted by employer's lawyer."

In the case at hand though the inquiry is conducted by an advocate and he has charged his professional fees, in the light of above rulings the inquiry cannot be vitiated on that ground.

7. Another ground raised by the workman is that the inquiry was conducted in English and he does not know English. Therefore it is submitted on behalf of the workman that the IO has violated the principles of natural justice and on that ground inquiry deserves to be set aside. In this respect the Ld. Adv. for the first party submitted that though the proceeding is produced in writing in English the inquiry was conducted in Marathi. He submitted that the witnesses are also not English speaking. They were examined and cross examined in Marathi. Therefore mere recording of proceeding in English does not create any defect in the inquiry proceedings and there is no violation of principles of natural justice. In support of his argument the Ld. Adv. for the first party resorted to the Bombay High Court ruling in National Organic Chemicals Ltd. & Anr V/s. Pandit Ladaku Patil 2008 III CLR 716. In that case the Hon'ble Court held that, the order of IO neither violates essence of standing order 25 (4) nor the Principles of Natual Justice as delinquent therein was quite conversant with English language. In the case at hand he submitted that, the inquiry was conducted in Marathi. Merely proceeding was reduced in writing in English. Therefore the inquiry cannot be said violative of principles of natural justice.

8. The Ld. Adv. for the first party submitted that the inquiry cannot be said unfair and improper when it is conducted as per the procedure. The charges are explained to him clearly, witnesses are examined ordinarily in the presence of employee and he is given fair and proper opportunity to cross examine the witnesses and the IO recorded his findings with reasons in his report. In support of his argument the Ld. Adv. resorted to the Apex Court ruling Sur Enamel and Stamping Works Ltd. V/s. The workmen AIR 1963 SC 1994 wherein the same principles are laid down by the Hon'ble Apex Court.

9. In the case at hand the charges were explained to the workman in clear terms. The witnesses were examined in his presence. He was given fair and proper opportunity to cross examine the witnesses through his defence representative. He has appointed the defence representative of his choice. He was also given an opportunity to lead his evidence. In the circumstances neither it can be said that there is any procedural defect in the inquiry nor it can be said that there was violation of principles of natural justice as the inquiry was conducted in Marathi and reduced in writing in English. In this back drop I hold that the inquiry is fair and proper. Accordingly I decide this issue no. 1 in the affirmative.

Issue No. 2:—

10. In respect of the charge the Ld. Adv. for the second party has argued that the charge is not proved against the workman. He pointed out that neither any offence was registered against the workman nor he was sent for medical examination. He also pointed out that no attempt was made on behalf of the management to locate or trace out the concerned dog. It is further pointed out that, such an incident is totally improbable especially when the dog is not a pet dog. In this respect the Ld. Adv. for the first party submitted that, the witnesses of the management have seen the workman in compromising position and their evidence need not be discarded. According to the Ld. Adv. these witnesses are independent witnesses. They have no enmity with the workman. Therefore their statement was safely accepted by the IO and the same cannot be viewed with doubt. The Ld. Adv. for the first party further submitted that, in the departmental inquiry standard of proof is limited to preponderance of probabilities and the management need not prove the charges beyond reasonable doubt as required in a criminal proceeding.

11. In this respect at the outset I would like to point out that the incident of indulging in sex with animal amount to unnatural offence punishable under Section 377 IPC. Had it been a fact, question arises as to why the concerned witnesses or management did not lodge any police complaint against the workman. Had there been police complaint, the investigating officer would have sent the workman for medical examination. He would have also traced out the dog concerned. Not lodging any police complaint against the workman is a serious flaw in the case of the management. No explanation is offered as to why they did not direct the concerned witnesses to lodge a police complaint against the workman.

12. No doubt in departmental inquiry, standard of proof is not as high as in criminal cases and mere preponderance of probability suffices the purpose. In this respect after perusing the evidence on record the incident appears totally improbable. A stray dog is not expected to allow a person even close to him. In the circumstances the incident of indulging in unnatural sex with a stray dog by the workman appears improbable especially as the workman is a married person have wife and children. In such circumstances the evidence on record cannot be said sufficient to prove the charge levelled against the workman. The management in this case has examined so called eye witnesses. However their evidence does not withstand the test of preponderance

of probability as stray dog would not allow a person to indulge in such act. Furthermore neither the workman was sent for medical examination nor there is any medical or expert evidence on record. No doubt such an opportunity to lead any additional evidence could have been given to the management. However in the case at hand it appears that there is no such additional evidence with the management to prove the charges. Inspite of that with all fairness I think it proper to give to the management an opportunity to lead additional evidence, if any to prove the charges. In the circumstances I hold that, though the inquiry is fair and proper, the findings of the Inquiry Officer are perverse. Accordingly I decide this issue No. 2 in the affirmative and proceed to pass the following order:

ORDER

(i) The inquiry is held to be fair and proper.

(ii) The findings of the Inquiry Officer are found to be perverse.

(iii) The first party is at liberty to lead additional evidence, if any, to prove the charges.

Date: 11.3.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 919.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुम्बई के पंचाट (संदर्भ संख्या 62/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/02/2014 को प्राप्त हुआ था।

[सं॰ एल-31012/19/1998-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 919.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/1999) of the Central Govt. Indus. Tribunal/Labour Court No. 2 Mumbai now as shown in Annexure, in the Industiral Dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Govenrment on 17/02/2014.

[No. L-31012/19/1998-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/62 OF 1999

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman,
Mumbai Port Trust,
Ballard Estate,
Mumbai-400038

AND

THEIR WORKMEN

The Secretary,
Transport and Dock Workers Union
P.D'mello Bhawan
P.D'mello Road
Carnac Bunder
Mumbai-400038

APPEARANCES:

For the Employer : Mr. Umesh Nabar, Advocate

For the Workmen : Mr. A.M. Koyande, Advocate

Mumbai, dated the 8th February, 2013

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-31012/19/98-IR (M), dated 01.03.1999 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Mumbai Port Trust in dismissing Shri Chandrakant Baburao Holamb and Shri Ashok Mahadev Katkar from the services of the Port is justified? If not, to what relief the workmen are entitled?"

2. After receipt of reference from Ministry, notices were issued to both the parties. In response to the notice, the second party union has filed its statement of claim at Ex-6. According to it, both these workmen were 'B' category Mazdoors. They were charge-sheeted by charge-sheet dtd. 26.7.1996 alleging that both of them on 15.1.1995 in furtherance of their common intension committed theft of 8 kg of Nickel Oxide (worth Rs. 80) from said No. 12, Indira Docks. They were apprehended by survey security Guard No. 116 of MbPT. They were found in possession of one rexine bag containing the said material which they were carrying jointly. The security guard informed the Yellow Gate Police Station. The Police arrested both of them and thereafter the management charge-sheeted these workmen of failure to maintain absolute integrity and devotion to duty and committing theft, fraud, and dishonesty in connection with MbPT work or property. The workman denied the charges. According to the union the inquiry conducted against the workmen was against the principles of natural justice and the findings of the IO are perverse as they are not based on the evidence led before him. The competent authority dismissed both the workmen from the services. The sentence is shockingly disproportionate.

3. Yellow Gate Police filed the charge-sheet in the Court of Metropolitan Magistrate, Ballard Pier of Mumbai in CC No. 566 P of 1995. The 16th Court of MM acquitted both the workmen on 4.3.1997. They produced the copy of the judgement before the disciplinary authority. However disciplinary authority did not consider the findings of the Metropolitan Magistrate. The Appellate Authority upheld the said order in mechanical manner and did not consider the evidence in the inquiry proceeding. According to the union charges of misconduct are not proved against the workmen. They further contended that even for the sake of argument charge is presumed to have been proved, the punishment awarded is disproportionate to the misconduct. Union therefore prays that, the order of dismissal be set aside and both the workmen be reinstated with full backwages and continuity of service w.e.f. 28.07.1997.

4. The management of MbPT resisted the claim vide its written statement at Ex-7. According to them the inquiry conducted against the workmen was as per the principles of natural justice. It was fair and proper. According to them the findings of the inquiry officer are legal and based on evidence on record. The punishment awarded to both these workmen is perfectly legal and proper and not disproportionate to the proved misconduct. Therefore they pray that the reference be dismissed with cost. The union filed rejoinder at Ex-8 and denied the contents in the written statement and reiterated their version in the statement of claim.

5. My Ld. predecessor framed the issues at Exh.9. The issues, in respect of the fairness of inquiry and as to the pervesity of findings of the Inquiry Officer are treated them as preliminary issues. In Award Part-I my Ld. Predecessor held that, the domestic inquiry was as per the principles of natural justice. However he held that, findings of the Inquiry Officer are perverse and the management was allowed to lead evidence.

6. My Ld. Predecessor has recorded further evidence and in Award Part-II he decided the remaining issues no. 3 & 4 and held that action of the management Mumbai Port Trust in dismissing both the workmen from services is unjustified and had directed the management to reinstate both the workmen with full back wages. This Award part II passed by of my Ld. Predecessor was confirmed by Single Judge of Hon'ble Bombay High Court in Writ Petition. The said order was challenged in Appeal before Division Bench. The Hon'ble Division Bench by consent of both the advocates set aside the said award and remanded the matter back to decide the same in accordance with law.

7. Following are the issues nos. 3 & 4 for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
3.	Whether the action of management dismissing these two workmen from service of Port Trust is justified?	No.
4.	If not, what relief the workmen are entitled to?	As per the final order.

REASONS

Issues nos. 3 & 4:—

8. The Ld. Adv. for the second party in this respect submitted that, the testimony of the sole witness Mr. Surve is totally unbelievable. Therefore in the criminal case CC No. 566 P of 1995, the Ld. Metropolitan Magistrate has acquitted both the workmen. The Inquiry Officer has not considered the judgement of the said criminal court. The Ld. Adv. for the second party therefore submitted that the Inquiry Officer out to have reject the evidence of the said witness whose testimony was not believed by the criminal court. On the point the Ld. Adv. for the second party cited Apex Court ruling in Capt M. Paul Anthony V/s. Bharat Gold Mines Ltd. & Anr (1999) 3 SCC 679. In that case the facts were similar i.e. the criminal case and departmental proceedings were based on the identical set of facts, namely, raid conducted at the appellants residence and recovery of incriminating articles therefrom. Findings recorded by IO therein indicates that charges against the appellant were sought to be proved by the police Officer and panch witness who had raided the appellant's house and hard affected the recovery. They were the only witnesses examined by the I.O. Relying upon their statements he came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court on a consideration of entire evidence came to a conclusion that, no search was conducted nor was any recovery made from the appellants' residence. The appellant was acquitted by throwing out the whole case of the prosecution.

In the light of these facts the Hon'ble Apex Court observed that :

> "It would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand."

9. On the point the Ld. Adv. for the first submitted that, this ruling is in respect of ex-parte inquiry and the ratio laid down therein is thus not applicable to this case, as inquiry in this matter is held by this Tribunal as just and proper. According to him to prove the charges the first party has examined the main eye witness Ahmed Surve who was Security Guard on duty and who has caught both the workmen red handed with a rexine bag containing 8 Kgs. of Nickel Oxide worth Rs. 80. He further submitted that, in domestic inquiry the charge need not be proved beyond reasonable doubt as required in criminal cases. On the other hand in domestic inquiry mere preponderance of probability suffice the purpose. He further submitted in domestic inquiry the rules of Evidence Act are not strictly applicable. In support of his argument the Ld. Adv. resorted to Division Bench ruling of Hon'ble Bombay High Court in Appeal no. 1165/2005 on Writ Petition No. 3186 of 2002 decided on

17/01/2006 wherein Hon'ble Court while admitting the appeal in this matter against the order of Single Judge, in para 2 of the judgement observed that:

"In a criminal trial the evidence is appreciated by the court by applying strict rule of evidence and proof beyond reasonable doubt. On the other hand the disciplinary proceedings, the evidence is appreciated by the applying the principle of preponderance of probability. The evidece that may fall short in a criminal case for proving an act beyond reasonable doubt may be sufficient to prove delinquency in the disciplinary proceedings."

10. On the point the Ld. Adv. also cited Apex Court ruling in State of Haryana & Ors. V/s. Rattan Singh 1977 LAB. I.C. 845(SC) in para 4 of the judgement the Hon'ble Apex Court on the point observed that:

"In a domestic inquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible."

11. In the light of the above ruling law is well settled on the point that, in departmental inquiry, the strict proof is not necessary to prove the charges. The charges therein are not required to be proved beyond reasonable doubt as required in criminal cases. In domestic inquiry standard of proof is limited to the extent of preponderance of probabilities. In this respect further I would also like to point out that, the guideline is also given by the Hon'ble Apex Court, in the above referred case of Rattan Singh (Supra) wherein the Hon'ble Apex Court observed that.

"The departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act."

12. In the light of the above settled principles of law, in respect of the alleged incidence, the Ld. Adv. for the second party submitted that, the evidence on record is totally unbelievable and unacceptable. He pointed out that, the two workmen at 11 P.M. are not expected to commit theft of such a small thing i.e. 8 kgs. of Nickel Oxide worth of Rs. 80 only. It also appears improbable that, a Security Guard alone caught two persons red handed with stolen property and none of them even tried to run away. He pointed out that witness Mr. Ahmed Surve has tried to implicate both the workmen by saying that, both were carrying the bag jointly. He has not made it clear as to how the two workmen were carrying a small bag jointly containing only 8 Kgs. of Nickel Oxide. It appears totally improbable that, in odd hours in the night at 11.00 p.m. they were holding jointly each end of the bag and exhibiting the stolen property openly. Neither the bag was too heavy nor, it was a big thing to hold by two persons. Witness Mr. Surve says both the workmen were holding the bag jointly or alternatively. His contention to that effect appears improbable. It appears that he says so merely to implicate both the workmen. Furthermore it also appears unnatural and improbable that, none of them ran away or made any attempt to escape, when they were obstructed by a single Security Guard. It is also not explained by Mr. Surve how he could hold both the workmen and took them to the cabin. He says that he gave a ring to the Police, however did not explain how he could apprehend both of them till Police came there. He also did not explain how he realised that, it was a stolen property in the bag. In his FIR he has contended that, he asked the workmen from where thay have brought the said property, but they did not tell anything about it. It is pertinent to note that, in his supplementary statement he has made improvement and says that the workmen told him that, they have stolen the Nickel Oxide from I.D. Godown no. 12. He further says in his supplementary statement that, thereafter he went to I.D. Godown no. 12 and inquired with Godown Superintendent, Mr. Shyam Sawant and realised that, the Nickel Oxide was stolen from the said godown. Therefore he has lodged the complaint. This is not only improvement in the story given in the FIR but is contrary thereto. He has not explained where the two workmen were, when he had gone to I.D. godown no. 12 and inquired with Mr. Sawant.

13. Furthermore I would like to point out that, the stolen property was 8 Kgs. of Nickel Oxide. Price thereof is shown only Rs. 80. Such a property is not useful to any other person and cannot be sold easily in the market. The stolen property is neither valuable nor has any special importance to them. Thus it appears totally improbable that, the two workers would come at 11 p.m. and would commit theft of such goods worth of only Rs. 80. It appears improbable that only one Security Guard Mr. Surve had caught hold of the two workmen and they did not make any attempt to run away and both stayed with him till arrival of Police party. Had it been an incident of theft both the workmen could have ran away when they had seen the Security Guard, at least they would have made attempt to run away. They could have also over powered the security guard who was alone. All the facts and circumstances appear totally improbable and unbelievable. They do not withstand even on the touch stone of preponderance of probabilities. Therefore the Ld. M.M. has also acquitted both the workmen. My Ld. Predecessor has also recorded the finding that the first party failed to prove the charges of theft and trespass. The said award was also upheld by the single Judge of the Hon'ble High Court. In Writ Appeal without pointing out any infirmity or defect therein, the Hon'ble Division Bench set aside the said order by consent of both the advocates and remanded the reference back for fresh award.

14. In the light of above discussion though the strict rules of Evidence Act are not applicable to the departmental inquiry, however in the case at hand the incident of theft

does not withstand even to the test of preponderance of probabilities. In the light of the above facts and circumstances on record, it is clear that, the charge of trespass and theft of 8 Kgs. of Nickel Oxide worth Rs. 80 by the two workmen as has been alleged is totally unacceptable. In this backdrop I hold that the first party failed to prove the charges of theft and trespass against both the workmen and the findings of the inquiry officer to that effect is found to be perverse. As a result I come to the conclusion that, the punishment of termination deserves to be set aside.

15. In respect of quantum of punishment, further I would also like to point out that, even presuming for the sake of argument that, the charge of theft is proved, for such theft of 8 kgs of Nickel Oxide worth Rs. 80 the punishment of termination of services of the two workmen also would have been held to be shockingly disproportionate. In this case as the first party failed to prove the charges against the second party workmen, the punishment deserves to be set aside and the workmen are entitled to be reinstated in the service.

16. In respect of back wages the second party have amended their statement of claim and contended that both the workmen are not gainfully employed. The workmen have also filed additional affidavit on the point of gainful employment. It is at Ex-40. In the cross examination at Ex-40, workman Chandrakant Holamb says that, he used to get Rs. 250 per week after termination of his service. Both the workmen are admittedly not in service of the first party and have not done any work for the first party. Therefore Id. adv. for the first party submitted that 'no work no wages' is the settled rule of law. He further submitted that both the workmen must have earned something to maintain themselves. Therefore according to him, the workmen are not entitled to any back wages. As against this the Ld. Adv. for the second party submitted that, both the workmen have come from poor family. They have not committed any mischief and they were deliberately kept out of work by the first party. They sustained huge monetary loss and their families suffered a lot. They were not gainfully employed anywhere. In the circumstances, he submitted that the workmen deserve for full back wages. After giving conscious thought to the arguments of both the parties. I am of the opinion that, awarding full back wages without any work, would amount to unnecessary burden on the state exchequer. At the same time I would also like to point out that, both the workmen are very poor and are unemployed. They may have earned some meagre amount for their maintenance by working intermittently. In the circumstances to meet the ends of justice. I think it proper to direct the first party to pay 70% back wages to each of these workmen. Accordingly I decide this issue no. 3 in the negative and issue no. 4 is decided accordingly. Hence I proceed to pass the following order:

ORDER

(i) The reference is partly allowed with no order as to cost.

(ii) The Order of dismissal from service of both the workmen is found to be not justified and the same is hereby set aside.

(iii) The first party is directed to reinstate both the workmen forthwith with 70% back wages from the date of their dismissal from service till the date of their reinstatement with continuity of service and other beneifts.

(iv) The amount if any already paid be adjusted in the arrears.

Date: 08.02.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 920.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुम्बई के पंचाट (संदर्भ संख्या 128/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/02/2014 को प्राप्त हुआ था।

[सं॰ एल-30011/54/2001-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 128/2001) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 17/02/14.

[No. L-30011/54/2001-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVENRMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/128 OF 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT OF HINDUSTAN PETROLEUM CORPORATION LTD.

The General Manager
Hindustan Petroleum Corporation Ltd.
Petroleum House
17, Jamshedji Tata Road
Churchgate
Mumbai-400 020.

AND

THEIR WORKMEN

(1) Deputy General Secretary
General Employees Association
Tel. Rasayan Bhavan
Tilak Road, Dadar
Mumbai.

(2) Workmen represented by Bhartiya Kamgar Karmachari Mahasangh
5, Navalkar Lane
Prarthana Samaj
Girgaon
Mumbai-400 004.

APPEARANCES:

FOR THE EMPLOYER : Mr. B.D. Birajdar, Advocate

FOR THE WORKMEN (Union no. 1) : Mr. R.D. Bhat, Advocate

FOR THE WORKMEN (BKKM) : Mr. G.S. Baj, Advocate

Mumbai, dated the 25th February, 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-30011/54/2001-IR (M), dated 13.11.2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the Charter of Demands raised by the General Employees Association vide their letter dated 22/01/2001 against the management of HPCL justified? If so, to what relief the concerned workmen are entitled?"

2. After receipt of the reference both the parties were served with notices. In response to the notice the second party union filed their statement of claim at Ex-8. According to them the workmen under reference are the employees of HPCL. They are shown as contract workers. The contracts are sham and bogus and nominal. It is mere paper made arrangement. The contract workers are being exploited a lot and they have been deprived of the rights and benefits which they are entitled to under various social welfare and labour legislations. The union has therefore placed various demands before the management. They have placed charter of demand, seeking wages, allowances and other facilities at par with regular employees. The workmen are employed for the work of HPCL in its marketing and refinery division. They are doing the work of the permanent nature as like regular workers since last number of years. Therefore prays that their charter of demand in respect of payment of wages and other allowance be allowed at par with the regular employees who are doing the same type of work.

3. During pendency of the reference the other union Bhartiya Kamgar Karmachari Mahasangh was also impleaded as party. The said union has filed its statement of claim on behlaf of its workers at Ex. 23 and list of their workmen is Annexure 'A'. According to them these workmen are employed in the employment of HPCL since last more than 20 years. They have been assigned permanent and perennial nature of work in HPCL refinery by the managerial personnel of the company. Their work is being supervised and controlled by the officers of the company. They are answerable for their work to the company directly. There is relationship between these workers and company that of employee and employer. The company has made some bougus, sham and concocted agreements to show these workmen as contract labourers. Since last 20 years many such alleged contractors have been changed however workmen are the same. They are doing the work of perennial nature as like permanent employees of the company. Still there is vast difference in the terms and conditions of service of these employees than that of the permanent and regular employees of the company. These workmen are not given any kind of statutory benefits such as CL, PL, SL. There is vast difference in the salary structure and allowances though they are performing the same type and kind of work. The total salary paid to these workmen is hardly to the tune of Rs. 3,500 to Rs. 4,000 p.m. Whereas the permanent employees doing the same and similar kind of work are paid near abour Rs. 20,000/- and aboe per month. Time and again the union requested the management to enhance the monthly wages and other terms and conditions of services of these workmen. However management did not pay any attention to their demand. The union has submitted its charter of demand for and on behalf of its members to the management *vide* its letter dt. 5/10/2005 and requested for amicable settlement. However no meeting has been arranged by the management. The workmen under reference are not getting sufficient pay and allowances. They are also not getting leave travel allowance, medical allowance, medical facilities, conveyance and washing allowance, sick leave, uniform and bonus facilities etc. as like the permanent employees. The union therefore prays that these workmen should be declared as permanent workmen of HPCL and they should be paid all consequential benefits of permanency w.e.f. the date each of them had completed 240 days continuous service. In the alternative they pray that they be paid all the consequential benefits at par with permanent employees and should be granted it w.e.f. the date when Hon' ble High Court passed an order on 5/4/2002 in WP No. 767 of 2001 and also prays for all other consequential reliefs.

4. The management of HPCL has resisted both the statement of claims *vide* their written statement at Ex-9 & 24. According to them reference is not tenable as the workmen under reference are not the employees of HPCL. On the other hand they are employees of the respective contractors. As there is no employer-employee relationship the reference is not tenable. According to them Bhartiya Kamgar Mahasangh has no representative character to pursue the reference as they have hardly few directly employed persons in the refinery. Therefore this union has no capacity to pursue the reference. These workmen cannot be absorbed or regularised in service as they are contractual labourers. The Apex Court has laid down the guidelines to that effect in the judgement of Steel Authority of India Ltd. They denied that the workmen were engaged by the Corporation since last 20 years and they are doing perennial nature of work. They denied that these workmen are working under supervision and control of the officers of the company. The Corporation awards the contracts to different successful contractors over a period of 20 years depending upon the lowest bid of the contractor to carry out different jobs of the Corporation as per The Contract Labour (R & A) Act 1970 and the contractors have been engaging the contract workmen with an understanding among the outgoing and incoming contractors. The Corporation has no supervision or control over the contract workmen.

5. The Corporation recruits their employees as per its recruitment rules and regulations. The Contractual employees are recruited by the contractor therefore they cannot be regularised. They denied all the allegations in both the statement of claim. They denied that the contracts are sham, bogus and mere camouflage to deprive these workmen from getting benefit of permanency. The management of HPCL therefore submitted that as these workmen are not employees of the corporation their demands are not tenable in the eye of law. Therefore they pray that the reference be rejected.

6. Both the unions have denied the contents in the written statement *vide* their respective rejoinder at Ex-10 & 25. They denied the contents inthe written statement and reiterated their claim that the contracts are sham, bogus and mere camouflage to deprive them from the benefits of permanency. Therefore they pray that the contents in the written statement be rejected and the management be directed to absorb all the workmen in their service permanently and to give them all consequential benefits.

7. My Ld. Predecessor framed the following issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the workers under reference are 'workmen' as defined under Section 2 (s) of the Industrial Disputes Act?	Yes
2.	Whether reference is not maintainable under Section 2 (k) of the Industrial Disputes Act?	Reference is maintainable
3.	Whether the demands raised by the General Employees Association *vide* their letter dated 22/1/2001 and by BKKM representing its members against the management of HPCL is justified?	Yes
4.	If so, what relief the concerned employees are entitled to?	As per final order

REASONS

Issues Nos. 1 & 2:—

8. The point involved in both these issues are revolving around the point in issue as to whether the workmen under reference are the employees of the first party. Therefore in order to avoid the repetition of discussion both these issues are discussed simultaneously. It is the case of the first party that these workmen are not their employees. According to them they are the employees of respective contractors. Therefore according to the first party neither the contract labourers can claim permanency or regularisation nor can raise an industrial dispute. According to them the Labour Court or Industrial Tribunal has no right to abolish the labour contracts. Such power lies with appropriate Government only. In support of this argument, the Id. adv. for the first party resorted to Apex Court ruling in N.T.P.C. & Ors. V/s. Bhadrisingh Thakur & ORs. 2008 AIR SCW 5649 wherein the Hon'ble Court para 14 of the judgement observed that;

> "In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with provisions of the said section. No Court including the industrial adjudicator has jurisdiction to do so."

However in the same judgement the Hon'ble Court further observed that;

> "When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If however he comes to the conclusion that contract is genuine he may refer the workman to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending."

9. In the case at hand it is the case of the second party that the contracts between the company and the contractors are sham and bogus. Therefore as observed in the above ruling, this tribunal has jurisdiction, to decide the point as to whether the contracts are sham and bogus and mere camouflage to deprive the workmen from getting the benefits

of permanency. In the circumstances it is clear that, the ratio laid down in the above ruling does not extend any help to the first party.

10. In respect of nature of contract, it was argued on behalf of the first party that there were valid contract of the company with registered contractors, who have supplied these labourers to the company. The labourers have to work as per the direction of the company. Merely giving direction or supervising their work by officers of the company is not sufficient proof to show that the workmen are direct employees of company. In support of his argument the Id. adv. resorted to Apex Court ruling in International Airport Authority of India V/s. International Air Cargo Workers Union & Anr. AIR 2009 SC 3063 wherein in para 28 of the judgement. the Hon'ble Court on the point observed that;

> "Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer."

11. On the point Id. adv. for the first party also resorted to another Apex Court ruling in General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon V/s. Bharat Lal & Anr. 2011 (1) LLN 368 (SC) wherein Hon'ble Court held that merely because work instructions were issued by officers of principal employer does not make him his employer rather than contractor.

12. In this respect the Id. advocates for the second party submitted that the workmen are not claiming contract are sham and bogus merely on the ground that, they were working under direct control of the officers of the company. According to them there are number of other factors, indicating that these workmen are employees of the first party and the contracts are sham, bogus and nominal. According to them, these workmen are working for more than 20 years continuously when the contractors were keep on changing periodically. Contractors were engaged for one or two years and the same workers continued to work for more than 20 years. Furthermore the vast duration of work indicate the perennial nature of work and permanent need of services of the workers. According to them the long duration is one of th circumstances indicating the regular need of work to the company. In support of their argument, the Id. Advs. resorted to Apex Court ruling in Workmen of Burkunda Colliery of Central Coal Fields Ltd. & Anr. V/s. Management of Burkunda Colliery of Central Coal Fields Ltd. & Anr 2006 I CLR 635 (S.C.) wherein the Hon'ble Court on the point observed that;

> "When temporary or ad-hoc appointment are continued for long, Courts presume that there is regular need for his services on regular post and considers case for regularisation."

13. The Ld. Advocates pointed out that in the case at hand the same workmen are working for more than 20 years continuously. It indicates that the need of the employer is of perennial and regular nature and their services are required on regular posts. This fact also indicates that, the contracts are sham, bogus and mere camouflage to deprive them from the benefits of permanent employees.

14. In this respect Ld. Adv. for the first party submitted that employee who has not come through Employment Exchange and not recruited after following the procedure prescribed therefor cannot be absorbed as permanent employee. In support of his argument the Ld. Adv. resorted to Bombay High Court ruling in Airport Authority of India, Mumbai V/s. Indian Airport Kamgar Union & Ors. 2010 III CLR 270 wherein the Hon'ble Court held that when the contract labourers do not come through Employment Exchange nor they have appeared for any written test and they have no complaint against the contractor who pays them their salaries and other benefits and when no charge sheet are issued to them by the principal employer, despite its supervision and control, these are all the incidents of the contract between the labourers and contractors which contract cannot be termed as sham and bogus.

15. The Ld. Adv. for the first party further submitted that the abolition of contract labour cannot be directed by the Court or Tribunal. Under section 10 of the Contract Labour Act, only appropriate Government can take the action to that effect. In support of his argument, the Ld. Adv. resorted to Apex Court ruling in Steel Authority of India Ltd. V/s. Union of India and Ors. 2006 III CLR 659 wherein the Hon'ble Court on the point observed that;

> "It is not disputed before us that matter relating to abolition of Contract Labour being governed by the provisions of the 1970 Act, the Industrial Court will have no jurisdiction in relation thereto."

16. In this respect Ld. Adv. for the second party submitted that, the workmen herein are not praying for abolition of contract labour system. On the other hand they claim theat the contracts are sham and bogus and mere camouflage to deprive them from getting the benefits to permanency. Therefore they rightly argued that, the ratio laid down in the above ruling is not attracted to the set of facts of the present case.

17. The Ld. Adv. for the the second party submitted that the union herein claims that the contracts are sham and bogus. Therefore this Tribunal has jurisdiction to entertain the reference. On the point they relied on the Constitutional Bench, Apex Court ruling in R.K. Panda & Ors. V/s. Steel Authority of India & Ors. 1994 II CLR 402 wherein employees therein were serving for 10 to 20 years and have claimed that they became direct employees of the respondent and they have direct link with the principal employer eliminating the contractor from the scene. In that matter the Hon'ble Court held that, normally the Labour

Court or Industrial Tribunal under the I.D. Act or under the Contract Labour Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them. Same ratio is reiterated by the Hon'ble Apex Court in its subsequent judgement in National Federation of Railway Porters and Vendors and Bearers V/s. Union of India & Ors. 1995 II CLR 214 (SC). The Ld. Adv. for the first party in this respect also cited the Apex Court ruling in The Secretary, State of Karnataka & Ors. V/s. Uma Devi & Ors. 2006 (3) L.L.N. 78 wherein, the Hon'ble Court held that, the services of contract workers, cannot be regularised as it would amount to back door entry in the service other than the recruitment process. In this respect I would like to point out that, the unions herein are not claiming regularisation or absorption in the service. On the other hand according to them the contracts are sham and nominal and the workers are in fact direct employees of the company. Therefore the ratio laid down in the above Apex Court ruling in the case of Uma Devi is also not attracted to the set of facts of the case at hand.

18. The Ld. Adv. for the second party submitted that, though these workmen are not recruited by following the recruitment process, they are doing their respective jobs since more than 20-25 years. It indicates that, their respective jobs are of perennial and regular nature and the company was also in need to the services permanently. The ability and qualification etc. of these workmen was never questioned by the company for last number of years. Some of them are also doing technical jobs like valve operators etc. The period they have worked for is sufficient to show that, they were well trained and competent to do their respective josb assigned to them. The Ld. Adv. further pointed out that not only these workmen were working under direct supervision of the officers of the company but they were doing the work of perennial nature. They are doing the respective jobs continuously for years together without any interruptions whereas the contractors were kept on changing after gap of a year or two. It is further pointed out that the officers of HPCL have appreciated the work of some of the workers and have issued letters of appreciation to them for the excellent work they have performed. These letters are on record with list Ex-53. He also pointed out that, once upon a time the first party company had issued PF slips to these workmen. Those PF slips are on record at Ex-49. These PF slips indicate that these workmen were working as employees of the company for few years since 1999. For that period PF slips were not issued by the contractors. All these facts indicate that the workmen herein were continuously working for the management for more than 20-25 years and the company was signing number of contracts merely to deprive these workmen from getting the benefits of permanency. He further pointed our that these workmen are working for meagre amount of minimum wages. After such a long service of more than 20 years their monthly pay is Rs. 5000 to Rs. 7000 only whereas the permanent employees, performing the same work are getting much more pay, allowances, leave medical leave facilities, canteen facilities, leave travel concession etc. According to the Ld. Adv. for the second party, the workmen herein are very poor and fighting to meet the two ends of their respective families. They hardly can spend any thing for the education and welfare of their children. By this type of policy of the company, poor are getting poorer. He further submitted that all these workmen are very poor and therefore they have no other alternative but to work for such a meagre amount for number of years. The Ld. Adv. further submitted that such type of exploitation needs to be checked. He pointed out that there are number of labour welfare legislations enacted in order to give protection to the workmen. Inspite of that, exploitation of the poor class is still going on under the garb of contract labourers or daily wagers.

19. Hon'ble Apex Court in a recent ruling has taken note of such exploitations of the poor workmen in Bhilwara Dugdh Udpadak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 (SC) wherein, the Hon'ble Apex Court in respect of such exploitation in the name of so called contract labourers or daily wagers observed that;

> "This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statute employers are every often resorting to subterfuge by trying to show that their employees are infact the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/workmen because it was realised that the employer and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor or that they are merely daily wage or shot term or casual employees when in fact they are doing the work of regular employees."
>
> The Hon'ble Court further observed that;
>
> "This Court cannot countenance such practices anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

20. The observations of Hon'ble Court are squarely applicable to the case at hand. The workmen herein are working since more than 20 years continuously. They are doing the work of perennial nature. Inspite of that the first party seems to have inducted some contractors and paying only minimum wages which is not sufficient in these days even to meet two ends of their families. It amounts to

exploitation as has been observed in the above ruling. In the light of facts and circumstances of this case, I hold that the workmen herein are the employees of the first party and there exists employer-employee relationship between them. Consequently I also hold that the reference is an industrial dispute as contemplated under Section 2 (k) of the I. D. Act, 1947. Accordingly I decide this issue No. 1 in the affirmative and issue No. 2 in the negative that reference is maintainable.

Issues Nos. 3 & 4:—

21. In the light of discussions and findings of issues Nos. 1 & 2 herein above it is clear that the contracts between the first party and the various contractors are found to be sham and bogus and the workmen under reference are held the employees of the first party. They are working there since last more than 20 years continuously. They are doing the work of perennial nature as has been discussed herein above. I therefore hold that these workmen are entitled to the pay, allowances and other benefits at par with the permanent employees on the basis of principle of *'equal work equal pay'*. The charter of demand is in respect of the pay, allowances, bonus and other benefits to these workmen at par with permanent employees of the first party. In this backdrop it needs no more discussion to arrive me at the conclusion that, the demand of the workmen under reference is quite justified. Accordingly I decide this issue No. 3 in the affirmative. In respect of issue No. 4 I hold that the workers under reference are entitled to pay, allowances and all other benefits at par with regular employees of the respective cadre of the first party. In short they are entitled to get the benefits they have put forward by way of their charter of demand by their letter dt. 22.01.2001 w.e.f 05.04.2002 *i.e.* from the date of order of Hon'ble High Court passed in Write Petition No. 676 of 2001. Thus I proceed to pass the following order:

ORDER

(i) The reference is allowed with no order as to cost.

(ii) The intermediate contracts with various contractors, are hereby declared as sham, bogus and nominal.

(iii) The workmen under reference are declared as regular employees of the first party.

(iv) The charter of demand dated 22-01-2001 is found to be just and proper. The first party is directed to pay salary, allowances and all other benefits to the workmen under reference as per the charter of demand forthwith and *w.e.f.* 5-4-2002.

(v) The first party is directed to pay all the arrears of the respective workmen within six months; 50% in cash and the rest of the amount be deposited in their respective Provident Fund Accounts.

Date: 25.02. 2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 921.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजमहल क्वार्ट्ज़ सेंड एंड केओलिन कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 180/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-29012/29/2001-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 921.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 180/2001) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Rajmahal Quartz Sand and Kaolin Company and their workman, which was received by the Central Government on 17/2/2014.

[No. L-29012/29/2001-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT: SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 180 OF 2001.

PARTIES : Sh. Kanahai Mandal
Gen. Secretary, Mangalhat
Zila English Khadan Mazdoor
Sangathan, Jharkhand, Sahibganj,
Vs. M/s. Rajmahal
Quartz-Sand & Kaolin Co.,
1, N.C. Bose Road, Sahibganj,
Jharkhand

APPEARANCES:

On behalf of the workman/Union : Mr. U.N. Lal
Ld. Advocate

On behalf of the Management : Mr. B.B. Pandey
Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 31st Dec., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the

I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29012/29/2001-IR(M) dt. 18.06.2001.

SCHEDULE

"Whether the action of the management of M/s Rajmahal Quartz Sand & Kaolin Co. in declaring lock out w.e.f. 07.07.1999 at the New Plant and non-payment of wages to the Workers is justified. If not, to what relief are the workmen entitled?."

2. The case of the General Secretary, Zila English Khadan Mazdoor Sanghthan, Mangalhat, Rajmahal, Distt : Sahebganj as stated in the written statement is that 109 workmen of the Union were working as disciplined at the new plant of the M/s. Rajmahal Quartz Sand & Kaolin Co. While they were engaged in washing China Clay in the press and Crusher department of the new plant, the management issued them the notice dt. 6.7.99 for suspension of the work illegal lock out w.e.f. 7.7.99 as result of the violation of the terms and conditions of the Bipartite agreement dt. 28.01.1999 by the workmen represented by Khadan Mazdoor Sangh. The General Secretary of the present Union raised by his letter dt. 9.7.99 the Industrial Dispute before the Regional Labour Commissioner, ©,Patna. In course of the conciliation proceeding as per File No.5(81)99ALC-II, both the parties settled it as per the terms and conditions of the Bipartite Agreement dt. 10.9.99 and accordingly the work was started by the workmen on 12.9.99 at other place of work. Though the Management had submitted five copies of the Bipartite Agreement in the proceedings before the ALC © Patna, on 14.9.99 but the dispute of the wages of forced idleness period was pending. Again at raising a dispute by the present Union as per its letter No. 26.4.2000 for the wages of forced idleness period of illegal lock out the conciliation proceeding started before the ALC©,Patna in the file No.5(3)/2000 ALC II filed, hence it resulted in the case. How other workers of the Khandan Mazdoor Sangh, Maharajpur Nayatola would affect the present workmen. The 109 workmen as per the list to the written statement are entitled to full wages to the tune of Rs. 10,48,686.87 as calculated in their written statement. (The reference has no list of alleged workmen.)

3. The dateless rejoinder of the workmen filed on their behalf of without signature of any Union Representative, so it is unacceptable.

4. Whereas the case of the O.P./Management with categorical denials is that M/s. Rajmahal Quartz Sand & Kaolin Co., hereinafter referred to as M/s. R.Q.S.K. has it China Clay Mines at Mangalhat Hill, Rajmahal, Jharkhand. The raw materials known as K.S, Stone as extracted from the Mine. It consists of China Clay and silica sand. Its needs separation for commercial use. Thus the Management has its mine and washing plant for the said purpose. It has two washing plants i.e., one manual and other merchandised which is semi mechanized commonly known as New Plant. The entire total labour strength about 450 workmen have been accordingly distributed at three places in Mine, Manual Plant and New Plant. The dispute relates to the new Plant where the total strength of workmen is about 175. Out of four Unions functioning at the establishment, the New Plant has two Unions active, namely, the present Union and Khadan Mazdoor Sangh. In case of any dispute or differences, the Management used to settle the matter at the Unit level. Such agreements were binding on all the concerned workmen. There was an agreement on 28.01.1999 about the rate of the New Filter Press of New Plant between the representatives of the union and that of the management, and amongst others, but the same was not honoured. The workmen of New Plant (Press Section) adopted 'go slow tactics', affecting other sections by their behaviour and activities, the management apprehended of breach of peace at the plant. The workmen also refused to work in two shifts, for which prior notices were issued; under the compelling circumstances, the management had to suspend the work of China Clay depart and press Depart of New Plant form 7.7.99. The workmen had created such position so as no alternative for the management except to suspend the work of New Plant and for the same, the work of Washing Department, China Clay Pressing and Cushing Departments of the New Plant was suspended from 07.07.1999 as per the Notice dt. 6.7.1999 for the various facts and reasoned for it. Thereafter, the workmen realized their fault, and then approached the Management for work. Subsequently, as per the agreement dt. 10.9.1999, the workman concerned were provided with work from 12.9.1999 at other place (Manual Plant) as alternative work. The management was always sincere in their efforts. So the suspension of work (Lock out) was under the provisions of law and justified. The workmen are not entitled to any payment of wages on the basis of the principle of "no work no pay" for the said period they had not worked as accepted by them in the case. The alleged demand for remaining of the workmen idle is unjustified for the reasons of go slow tactics and objectionable behaviors creating breach of peace etc. So the workman is not entitled to any relief.

5. Specifically denying the allegations of the Union, the O.P./Management has stated that the said agreement was binding on all the workmen of New Plant and the violation of the agreement was by all workmen irrespective of any Union. The Reference No.180/2000 as per the Government of India's Order No.L-29011/12/2000-IR(M) dt. 31.05.2000 in respect of the action of the management in declaring lock out w.e.f. 6.7.1999, resulting in non-employment of 175 workers is still pending in the CGIT (No.1), Dhanbad, but the Union took no step till date. No claim is sustainable for the period for which they have worked and got their wages. The period of idleness was due to the fault of the workmen themselves, and the management has not taken any work from them during the said period, the management is not liable to pay any wages for the said period. Sec.22 of the I.D. Act 1947 is not applicable to this case.

FINDING WITH REASONS

6. In the instant reference, WW1 Deven Yadav, the Operator, WW2 Sukhadeo Singh, (Retd. Operator of the R.Q.S. Company) for the Union, and MW1 Mohan Sah, the Production In charge for the O.P./Management have been respectively examined.

Mr. U.N. Lal, Learned Advocate for the union has submitted that as per the statement of WW1 Devan Yadav, (one of the 109 workmen as per the list to the written statement), all the workmen had gone to the Company for work/duty on 7.7.1999 from 6 a.m. to 2 p.m. as also for the second shift of duty but they found that the company was locked, though they sat there. Consequently on 9.9.1999 at the calling for the workmen by the company itself, there was a bipartite agreement (Ext. W.3) on 10.9.1999 between the Company and them according to which they were given workmen w.e.f. 12.9.1999 at different plant of the Company at 1 K.m. away from the company; none of the workmen was paid for the lock out period of the Company, for which they also brought a fresh industrial dispute on 26.8.2000; so they are entitled to their wages for the illegal lock out period from 7.7.1999 to 11.9.1999 as also affirmed by WW2 Sukhdeo Rajak, the Retd. Operator now also evident from their documents Extt. W.1 to W.4. Mr Lal, Learned Counsel for the union has further submitted that MW1 Mohan Sah confirmed their lock out as per the Company's Notice dt. 6.7.1999 from 7.7.1999 and non-payment of their wages for the lockout period.

7. Whereas Mr. B.B. Pandey, Learned Counsel for the O.P./Management vociferously contended that the Referenced schedule neither refers to the number of the workmen nor the period of alleged lock out, so it is unsustainable as vague. Mr. Pandey has further submitted that MW1 Mohan Sah, the Production In-charge of the Company, has irrebuttably proved that the suspension of work at the New Plant operated since 7th July, 1999 as per the Notice dt. 6.7.1999 of the Management in Hindi and English (Ext.M.1 & 2 respectively) due to the arbitrariness of the workmen by adopting 'Go slow' as well as forceful taking of wages from the management, remaining so until the settlement held on 10.9.1999 between the Union for the workman and the management for start of workmen at the New Plant on the basis of which those workmen were alternatively given their employment at the manual plant in the night shift, so their claim for payment of their wages for alleged period of suspension of work at the new plant is not legally justified. Lastly the emphatic contention of Mr. Pandey, Learned Counsel for the O.P./Management is that another Industrial Dispute Ref. No. 180/2000 raised by the same Union was disposed of as No dispute Award as per the Award dt. 2nd Sept., 2010 of the CGIT No. 1, Dhanbad which directly related to the action of this same management in declaring lockout w.e.f. same date 6.7.1999 resulting in non-employment of 175 workers as apparent from the Certified Copies of the Award and Order of Reference (Ext. M-4/2-3 respectively)

8. After hearing both the Learned Counsels for both respective parties, I have gone through the materials available on the case record; I find the facts as under:

(i) The present reference as per its schedule is without numbers or a list of workmen but the same union filed its written statement with a list of 109 workmen. It is vague.

(ii) There was a valid & legal suspension of work by the O.P./Management for the arbitionsiness and go slow tactics of the workmen in their work at the new plant, though compliance of provision of notice as under Sec. 22 of the I.D. Act 1947 is not applicable to the present cases, as the present industry of China Clay and silica does not come under any of the Public Utility Services as defined under the schedule I of the said Act.

(iii) The present reference is thoroughly barred by the principle of Res-judicata, as the previous Ref. No. 108/2000 raised by the same Union against the same Management for the same cause was awarded as 'No Dispute' as per the Award dt. 2.9.2000 passed by the C.G.I.T. No. 1, Dhanbad (Ext.M.4/2.). Under the circumstances, it is however, in the terms of the reference hereby:

ORDERED

That the action of the Management of M/s Rajmahal Quartz-Sand & Kaolin Co, Rajmahal to lock out from 7.7.99 at its new plant for its valid reason and not to pay the wages for the workers for the period as quite legally justified, Hence, none of workers is entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 922.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कुमार जी सी पाण्डेय एंड कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 32/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-29011/16/2011-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 922.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2012) of the

Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kumar G.C. Pandey and Company and their workman, which was received by the Central Government on 21-2-2014.

[No. L-29011/16/2011-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 32 OF 2012.

PARTIES : The General Secretary, Quarry Workers Union, Pakur Vs. M/s Kumar G.C. Pandey Company, Khaprajola, Pakur

APPEARANCES:

On behalf of the Workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 27th Dec., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-29011/16/2011-IR(M) dt. 02.05.2012.

SCHEDULE

"Whether the action of the management of M/s Kumar G.C. Pandey & Co., Malpahari, Pakur, in not paying the amount of bonus of the last 5 years to Shri Krishna Mandal is legal and justified? What relief the workman is entitled to ?''

2. None appeared as the Union representative for "Quarry Workers" Union, Pakur, nor workman Krishna Mandal appeared nor any written statement of the workman filed by any of them; likewise none appeared for O.P./M/s Kumar G.C. Pandey Co.,

On perusal of the case record, it appears that the case has been all along pending for filling the written statement of the workman Krishna Mandal along with the documents in the reference which related an issue about the payment of Bonus for the last five years, but despite four Regd. Notices dt. 25th June, 2012, 7th Jan, 24th May, 4th Nov., 2013 having been issued to the Union as well as to the O.P./Company concerned on their respective addresses as noted in the reference itself, neither the Union Representative nor the workman appeared nor any written statement till now filed on behalf of the workman. Under these circumstances, the conducts of the Union Representative and the workman clearly show that they are not willing to pursue the case for finality. Hence the case is closed as no Industrial dispute existent; accordingly an Award of No Dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 923.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कुमार जी. सी. पाण्डेय एंड कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय नं॰ 2 धनबाद के पंचाट (संदर्भ संख्या 33/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 17-2-2014 को प्राप्त हुआ था।

[सं॰ एल-29011/19/2011-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 923.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2012) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Kumar G.C. Pandey and Company and their workman, which was received by the Central Government on 21-2-2014.

[No. L-29011/19/2011-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT:
SHRI KISHORI RAM
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE No. 33 OF 2012

PARTIES : The General Secretary, Quarry Workers Union, Pakur Vs. M/s Kumar G.C. Pandey Company, Khaprajola, Pakur

APPEARANCES:

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dhanbad, Dated the 27th Dec., 2013

AWARD

The Government of India, Ministry of Labour, in exericse of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-29011/19/2011-IR(M) dt. 02.05.2012.

SCHEDULE

"Whether the action of the management of M/s Kumar G.C. Pandey & Co., Malpahari, Pakur, in not releasing the final dues to 22 workers (list enclosed) is legal and justified? What relief the workman is entitled to?"

2. Neither Union representative for Quarry Workers' Union, Pakur, nor any of twenty two workers as per the list appeared nor any written statement of the workmen filled by the union, just as none appeared for the O.P./M/s Kumar G.C. Pandey Company.

On perusal of the case record, the case has been all along pending for filing written statement and the documents of the workmen for which four Regd., Notices dt. 17.1.13, 25.6.2012, 17.4.2013 and 23.5.13 were issued to the General Secretary of the Union and the Company concerned on their respective addresses noted in the Reference itself. The Union Representatives as well as the workmen by their conducts appear to be uninterested in pursuing the case. Under these cirumstances, it prima-facie appears to be useless to proceed with the case. Hence, the case is closed as no Industrial Dispute existent; and accordingly an Award of 'No dispute' is passed.

KISHORI RAM, Presiding Officer

List of workmen

S/Sh.

1. Mirtun Rajbanshi
2. Nepa Rajbanshi
3. Arjun Rajbanshi
4. Suku Seikh
5. Vikas Ravidas
6. Jagdish Rajbanshi
7. Badam Rajbanshi
8. Mahadev Rajbanshi
9. Ashok Rajbanshi
10. Shishir Karmkar
11. Sufal Rajbanshi
12. Rehman Seikh
13. Kalu Seikh
14. Sukumar Rajbanshi
15. Sapan Rajbanshi
16. Pujrai Rajbanshi
17. Krishna Sah
18. Sukumar Sah
19. Kalu Rajbanshi
20. Ananta Rajbanshi
21. Parikha Rajbanshi
22. Bablu Rajbanshi

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 924.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रिलायंस लाइफ इन्शुरन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय नं॰ 2 धनबाद के पंचाट (संदर्भ संख्या 41/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 17-2-2014 को प्राप्त हुआ था।

[सं॰ एल-17012/18/2011-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 924.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2012) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Reliance Life Insurance Company Limited and their workman, which was received by the Central Government on 17-2-2014.

[No. L-17012/18/2011-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE No. 41 OF 2012.

PARTIES : Miss Gyani Kumari (Workwoman) Vs. Zonal Manager (HR), Reliance Life Insurance Co., Ltd., Kolkata

APPEARANCES:

On behalf of the workman : None

On behalf of the Management : Mr. K. Chakraborty, Ld. Advocate

State : Jharkhand Industry : Insurance

Dated, Dhanbad, the 16th May, 2013

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this tribunal for adjudication *vide* their Order No. L-17012/18/2011-IR(M) dt. 28.06.2012.

SCHEDULE

"Whether the action of the management of M/s Life Insurance Co. Ltd., Kolkata in terminating the services of Miss Gyani Kumari w.e.f. 19.2.2009 is legal and justified? What relief the workman is entitled to?"

2. Neither petitioner Miss Gyani Kumari appeared nor she filed her written statement in this reference case despite four registered notices to her for it. Mr. K. Chakraborty, the Ld. Advocate for the O.P./Management is present and files the written statement of the management in duplicate.

Persuade the case record, it stands clear that despite three registered notices dt. 27.8.2012, 8th Jan. and 13th Feb., 2013 having been issued to the petitioner on her address as noted in her reference case neither she appeared on any date nor filed her written statement. Last registered letter appears to have returned with the comment of the Postal staff concerned dt. 26.2.2013 "Sabhi Dukan Mai Tala Bandh Rehta Hai, Bapas Kiya" under his signature.

Under these circumstances, it is apparently that the petitioner is not willing to contest her case; hence the case related to an issue about the termination of the service of the petitioner w.e.f. 19.2.2009 is closed as no Industrial Dispute existent. In result, an order of No Industrial Dispute existent is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 925.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्शुरन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 253/87) प्रकाशित करती है जो केन्द्रीय सरकार को 17-2-2014 को प्राप्त हुआ था।

[सं॰ एल-17012/11/87-डी. IV (ए)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 253/87) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 17-2-2014.

[No. L-17012/11/87-D.IV(A)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/253/87

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Raipur Division Insurance Employees Union,
Pandry, Raipur ....Workman/Union

Versus

Divisional Manager,
Life Insurance Corporation of India,
Jeevan Beema Marg,
Raipur ....Management

AWARD

Passed on this 22nd day of October, 2013

1. As per letter dated 8-12-87 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-17012/11/87-D.IV(A). The dispute under reference relates to:

"Whether the action of the management of Life Insurance Corpn. of India, Divl. Office, Raipur in terminating the services of the workman listed below, is justified? If not, to what relief the workman concerned are entitled?"

2. After receiving reference, notices were issued to the parties. Ist party union filed statement of claim at Page 2/1 to 2/6. The case of Ist party union is that Government has made reference whether the termination of services of 5 employees namely Shri P. Venkataramani, Iqbal Ahmed Khan, Rajendra Kumar Das, Kumari Deepali Ghosh and Kumari Varsha Rahatgaonkar is justified? Union submits that all these employees were working as micro processor operator with the IInd party. They were appointed on 3-2-86. They had completed 240 days continuous service. Management of IInd party had given artificial breaks for period of 45 days is unfair labour practice. The Union has given working days of all those employees — Shri P. Venkataramani — 308 days, Iqbal Ahmed Khan — 283 days, Rajendra Kumar Das — 312 days, Kumari Deepali Ghosh — 307 days and Kumari Varsha Rahatgaonkar — 293 days. Union further contented that the services of all those employees were terminated in violation of Section 25-G, H

of the I.D. Act. The termination of their services on 17-12-86 & 18-12-86 is illegal.

3. Union further submits that the termination orders were passed taking shelter of interim award dated 15-1-86 by National Tribunal. According to Union, the management appointed those employees on 3-2-86 prior to the Tribunal's Interim award dated 15-1-86. Therefore said award is not applicable to those employees. The award cannot sit over provisions of the Act. The appointments of employee and period of their continuance in service has been accepted by the management. The Union submits that those employees are illegally retrenched. On such grounds, Union prays for reinstatement with full back wages.

4. IInd party filed Written Statement at page 3/1 to 3/5. Services of Iqbal Ahmed Khan & Rajendra Kumar Das were terminated on 18-12-86 and services of Shri P. Venkataramani, Kumari Deepali Ghosh and Kumari Varsha Rahatgaonkar were terminated on 19-12-86. After FOC submitted by ALC, the dispute is referred. IInd party submits that appointment of all 5 employees were purely on temporary basis for 42 days from 3-2-86. On completion of said period, their services were to be terminated as per Clause 2 of the appointment letter. However they were given further appointment for 42 days on temporary basis. Their services were not terminated as Interim order from National Industrial Tribunal Bomaby was brought to notice. The directions were given not to terminate services of any temporary employee during pendency of the case before National Tribunal.

5. That various Associations of Class-III and IV employees working in LIC of India and referred dispute relating to quantum of wages payable to the temporary, badly and part time employees working in the Corporation together with the issue relating to their absorption and other conditions of service. The Government of India constituted a National Tribunal presided over by Shri R.D. Tulpule on 28-5-85 and the dispute was referred. The interim order was passed on 15-1-86 prohibiting termination of services of all temporary employee. That all those employees are given undertaking in writing that they would not get benefit of service beyond 84 days rendered by them. As such excluding said period, the employees has not completed 240 days continuous service preceding termination of their serivces. The termination of their service is not in violation of Section 25-F, G of I.D. Act. On such ground, IInd party prays for rejection of claim of workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the managmenet of Life Insurance Corpn. of India, Divl. Office, Raipur in terminating the services of Shri Iqbal Ahmed Khan & Rajendra Kumar Das from 18-12-86 and Shri P. Venkataramani, Kumari Deepali Ghosh and Kumari Varsha Rahatgaonkar from 19-12-86 is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?	Relief prayed by workman is rejected.

REASONS

7. Union is challenging legality of termination of those employees for violation of Section 25-F of I.D. Act. That all employees have completed 240 days continuous service, that notice pay was not paid to them, no retrenchment compensation was paid. Management denied above contentions. It is submitted that interim order dated 15-1-86 was passed by National Tribunal prohibiting termination of services of all temporary employees. Those employees had given undertaking in that regard. Affidavit of Shri P. Venkataramani is filed consistent with the contentions in statement of claim filed by the Union. Identical affidavit of Shri Iqbal Ahmed Khan and Kumari Deepali Ghosh are filed. Shri P. Venkataramani in his cross-examination says that R-2 bears his signature, he tried to claim that his signatures were forcibly obtained on the documents. He had complained in that regard to the Union and higher officers of the management. He admits knowledge of interim award passed by National Tribunal. Document R-2 is declaration given by the witness that he will not claim any benefit for the absorption or other benefits in LIC on account of such continuance in service of LIC beyond 85 days. Similar document signed by Iqbal Khan R-3 is produced. Kumari Varsha Rahatgaonkar did not appear for her cross-examination therefore her evidence on affidavit cannot be relied upon in support of her claim. Shri Iqbal Khan in his cross-examination says first appointment order was issued for 42 days, he had given undertaking as per document R-3. He admits that undertaking was to reveal that he would not claim for benefit of working days beyond 85 days. That his signatures were obtained by force and he had complained to the higher authorities and office bearer of the Union but documents in that regard are not produced by the workman. Copy of Interim Award passed by National Tribunal is produced along with Written Statement. The reference to the National Tribunal was in respect of what should be the wages and other conditions of service by badly, temporary and part time workmen of the Life Insurance Corporation of India as well as the conditions of their absorption into regular cadre. The Employees Union were opposing the appointment of outsiders. During pendency of the reference proceeding, Interim order passed by National Tribunal that—

"As far as possible, the Corporation, however stated that where an employee is appointed from amongst the

badly, temporary or part time workmen against a vacancy, he will be continued as long as that vacancy continues, provided, he gives an undertaking that no benefits on their behalf would be claimed if by this circumstance, the employee continues in position for a period more than 85 days. The Unions are agreeable and the workmen concerned shall give an undertaking that they would not claim any benefit on account of such continuation for a period more than 85 days if it occurs of absorption of any other benefit subject to that he may be continued."

8. Considering the termination of services of above employees, they are protected as they had submitted undertaking in terms of interim award passed by National Tribunal. The period beyond 85 days deserves to be excluded while calculating 240 days continuous service. If said period is excluded, above employees have not completed 240 days continuous service with IInd party LIC. As such they are not covered as workman under Section 25 (B) of I.D. Act. They are not entitled to protection under Section 25-F of I.D. Act. For above reasons, termination of services of those employees cannot be said illegal for violation of Section 25-F of I.D. Act. Therefore I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

(1) Action of the management of Life Insurance Corpn. of India, Divl. Office, Raipur in terminating the services of Shri Iqbal Ahmed Khan & Rajendra Kumar Das from 18-12-86 and Shri P. Venkataramani, Kumari Deepali Ghosh and Kumari Varsha Rahatgaonkar from 19-12-86 is proper.

(2) Relief prayed by Union/workmen is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 926.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम्प्लाइज स्टेट इन्शुरन्स कारपोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 53/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-15012/3/98-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No 53/2005) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Employees State Insurance Corporation and their workman, which was received by the Central Government on 17/2/2014.

[No. L-15012/3/98-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/53/2005

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Gopal Savita,
S/o Shri Sitaram Savita,
R/o M.H. Chauraha,
Near Police Chowki,
Morar, Gwalior ...Workman

Versus

The Manager,
ESI Corpn.,
Munna Lal Gupta Building,
Nishatpura,
Banmore, Distt. Morena (MP)

Director General,
Employees State Insurance Corpn.,
Panchdeep Bhavan,
Kotma Road,
New Delhi ...Managements

AWARD

(Passed on this 11th day of October 2013)

1. As per letter dated 3-6-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-15012/3/98-IR(M). The dispute under reference relates to:

"Whether the action of the management of Employees State Insurance Corporation, New Delhi in terminating the services of Shri Gopal Savita *vide* order dated 20th June 1994 is legal and justified? If not, to what relief the disputant concerned is entitled?"

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 2/1 to 2/3. Case of workman is that earlier she had approached CAT for redressal of his grievance. The CAT directed applicant to make fresh application to Authority under I.D. Act as per order dated 15.4.98. The workman submits that he was appointed as peon on daily wages by IInd Party No. 2. He was performing duties sincerely. That Manager Shri S.L. Dhevane was in the habit of drinking. He misbehaved with the customers. Complaint made by Cement

Factory Mazdoor Sangh Banmore was submitted against the Manager. His services were terminated by Manager *vide* order dated 20.6.94 with allegation of misbehavior with officers. The allegation are baseless. That workman had submitted appeal to IInd Party No. 1 on 18.7.94. He did not receive any response to his appeal despite of issuing reminder dated 23.10.97. That initially Govt. refused to make reference observing that he was casual employee during the period 30.5.94 to 17.6.04. In Writ Petition No. 1985/99 filed by him, directions were given to the Govt. and accordingly reference is made.

3. Ist Party workman submits that employee cannot be terminated by punishment without giving any opportunity. That he was waiting for decision of the appeal by IInd Party No. 1. That he was working with IInd Party. His services are dismissed without giving reasonable opportunity. He suffered loss of wages. Termination of his services is in violation of provisions of I.D. Act. He prays for reinstatement with back wages.

4. IInd Party filed Written Statement at Page 11/1 to 11/2. Claim of workman is totally denied. IInd Party submits that Ist Party workman was not appointed against any vacant post. He was engaged for specific work for specific period by the management. That since 1989, there are surplus posts in the cadre of peon, LDC. There is no question for appointing workman. Ist Party workman was engaged on daily wages by the then Manager Shri S.L. Dhobane in leave vacancy of regular Record Sorter Shri Sitaram Savita. Manager Grade II is the Head of office who is incharge and as per powers delegated, he can engage a substitute. That workman was not selected by Deptt. Selection Committee, he was not sponsored through Employment Exchange. Workman hardly worked for 15 days. He is not covered as workman under Section 25(B) of I.D. Act the workman was paid wages Rs. 557/- on 27.5.95. On such ground, IInd Party prays for rejection of claim of workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Employees State Insurance Corporation, New Delhi in terminating the services of Shri Gopal Savita *vide* order dated 20th June 1994 is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. Ist Party workman is challenging termination of his service contending that he was not given any opportunity prior to his termination of his service. IInd Party submits that workman is not covered under Section 25B of I.D. Act. He was casually employed in leave vacancy of his father by then Manager Shri S.L. Dhobane. That workman was not sponsored through Employment Exchange. He was not appointed on recommendation of Deptt. Selection Committee.

7. Workman filed affidavit of witness contending that he was appointed by IInd Party management from 30.5.94. His services were terminated from 20.6.94. He has also made allegation that Manager Shri S.L. Dhobane was habitual drunker. Workman was not present for his cross-examination, therefore his evidence cannot be considered. His evidence was closed on 25.2.2011.

8. Management filed affidavit of witness Shri Anil Kumar S/o Shri Sudhir Kumar Singh. The witness of the management has stated that workman was engaged during leave vacancy of his father Sitaram. Workman worked for 15 days. His evidence remained unchallenged.

9. Workman has not established that he had worked continuously more than 240 days preceding his termination of his services. Therefore he is not covered as workman under Section 25 (B) of I.D. Act. He is not entitled to protection under Section 25-F of I.D. Act. Therefore action of management cannot be said illegal. For above reasons I record my finding in Point No. 1 in Affirmative.

10. In the result award is passed as under:—

(1) Action of the management of Employees State Insurance Corporation, New Delhi in terminating the services of Shri Gopal Savita *vide* order dated 20th June 1994 is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 927.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैंगनीज ओर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 64/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-27012/3/99-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government

hereby publishes the award (Ref. No. 64/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Manganese Ore India Limited and their workman, which was received by theCentral Government on 17/2/2014.

[No. L-27012/3/99-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/64/00

SHRI R.B. PATLE, Presiding Officer.

Shri Sohanlal,
S/o Shri Neelkanth,
Kachhi Barang, Hirapur,
Bharweli,
PO Balaghat ...Workman

Versus

Chairman cum Managing Director,
M/s Manganese Ore India Ltd.,
3 Mount Road Extension,
Sadar, Nagpur. ...Management

AWARD

(Passed on this 30th day of October 2013)

1. As per letter dated 13-3-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-27012/3/99-IR(Misc.). The dispute under reference relates to:

"Whether the demand raised by Shri Sohanlal and 9 others against the management of Manganese Ore India Ltd. *vide* their representation dated 6.10.88 is justified? If not, to what relief the concerned workmen are entitled?"

2. After receiving reference, notices were issued to parties. Ist Party workman filed statement of claim at Page 4/1 to 4/3. The case of Ist Party workman is that 10 workmen shown in the annexure were working on piece rated basis for more than 12 years. They were performing work of Compressor Helper, Fieldman, Loco Helper etc. with Management. The Management appointed workman with them and from time to time issued notices for appointment of piece rated employees on basis of seniority, educational qualifications, average earning in last 12 months, attendance performance in interview. That after interview 152 persons were recommended for appointment as fieldman in Pay Scale Rs. 1600-1850. *Vide* order dated 14.2.99, 21 workmen were appointed. That Ist Party workman were ignored by the management. No regular appointment orders were issued. Ist Party workman claims that they have sufficient knowledge, experience, considerable seniority, they are not considered. The junior employees working on piece rated basis having less education and experience are appointed as fieldman by IInd party. All the workmen failed discriminated in the appointed of fieldman by IInd Party. They prays direction to the management to issue appointment order for the post of fieldman to them from the date their juniors were appointed as fieldman.

3. IInd Party filed Written Statement at Page 7/1 to 7/8. IInd Party denied claim of 1st Party workman that the Government had earlier rejected to make reference without their being any fresh material and application of mind. The reference has been made is not tenable. The dispute has been raised claiming appointment by individual employee Sohanlal and others is not tenable. The individual workman has no right to raise the dispute except termination, dismissal etc. under Section 2A of I.D. Act.

4. IInd Party further submits that it is Govt. of India undertaking under Ministry of Steel. There are rules for recruitment and promotions framed in 1994. In these rules, a new category of fieldman was included. As per these rules, 100% of the vacancies of Fieldman are to be filled through the process of recruitment from amongst the internal piece rated workman. The rules do not provide details therefore the material was discussed between management and recognized Union. A Bipartite Agreement was finalized prescribing the norms to be followed in the matter of selection of Piece rated workers against the post of Fieldmen in the company. Marks have been prescribed as Seniority- 10 marks, Educational Qualification- 5 marks, performance with respect to average earning- 10 marks, attendance for last 12 months- 10 marks and performance during interview- 15 marks. That the management notified vacancies of Fieldmen at Balaghat Mine inviting applications from amongst the Piece rated workers serving in that mine for internal recruitment as Fieldmen. Applications from piece rated workmen were invited. 552 applications were received. The selection committee constituted interview of the candidates in 3rd week of February, 1998. Names of 152 candidates were recommended for appointment. That 76 candidates were appointed as fieldman. The workmen in present dispute were not selected among 152 candidates recommended by the Committee. That there were complaints about irregularities in the selection of fieldmen. Therefore Union had given strike notice. The matter was reconsidered after discussion with the Union. The Committee was directed to review and correct irregularities. The candidates who were found suitable were deleted. The candidates found

suitable but not recommended by Committee were selected. The candidates were appointed on probation. Their probation was extended. On such grounds IInd party submits that the Ist party workman were not selected even after following the norms of selection by Committee. No irregularity is committed. Workman are not discriminated by management. On such grounds, IInd Party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the demand raised by Shri Sohanlal and 9 others against the management of Manganese Ore India Ltd. *vide* their representation dated 6.10.88 is legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman rejected.

REASONS

6. 10 workmen names shown in Annexure I raised dispute that the case of those workmen is that they were working as piece rated workers for more than 12 years in IInd Party. They are not selected as fieldman. The labours having less education, experience and junior to them are selected and appointed as fieldmen. On such ground, they have prayed directions be issued to the management to issue order of appointment as fieldmen from the date the junior employees were appointed as fieldmen. The claim of workman is opposed by management in their Written Statement discussed above. Workman did not participate in the reference proceeding. They have not adduced evidence in support of their demands. The evidence of the workmen is closed on 1.6.2010. Management filed affidavit of witness of Shri Nitin Pagnis covering most of the contentions in Written Statement filed by IInd Party. That 152 candidates were recommended by Committee for appointment as fieldmen. After the complaint, the letter was reviewed and suitable candidates were recommended. The candidates found not suitable were dropped from the list. The evidence of management's witness remained unchallenged. I do not find reason to disbelieve his evidence. Thus claim of workmen is not supported by evidence. Therefore the demand of workman cannot be said proper. Therefore I record my finding in Point No. 1 in Negative.

7. In the result, award is passed as under :—

(1) The demand raised by Shri Sohanlal and 9 others against the management of Manganese Ore India Ltd. *vide* their representation dated 6.10.88 is not proper.

(2) Relief prayed by Ist Party workmen are rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 928.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 39/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-11011/2/2007-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 928.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2007) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 17/2/2014.

[No. L-11011/2/2007-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 17th day of December, 2013

INDUSTRIAL DISPUTE NO. 39/2007

Between :

Sri. G.A. Rudrappa,
General Secretary,
Indian Airports Kamgar Union,
C/o Airports Authority of India, NAD,
Begumpet, Hyderabad-500016 ...Petitioner

AND

The Airport Director,
Airports Authority of India,
Begumpet, Hyderabad. ...Respondent

Appearances:

For the Petitioner : M/s. Ch. Indrasena Reddy & D. Vilas, Advocates

For the Respondent : M/s A.K. Jayaprakash Rao, P. Sudha, M. Govind & Vekatesh Dixit, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-11011/2/2007-IR(M) dated 16/7/2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Airports Authority of India and their workwomen. The reference is,

SCHEDULE

"Whether the action of the management of Airports Authority of India in not granting next higher scale to the workmen of Fire Crew on the basis of passing Advance Refresher Course and ignoring the length of service rendered by the workmen is legal and justified? If not, what relief the workmen are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 39/2007 and notices were issued to the parties concerned.

2. Petitioner union represented by the General Secretary filed claim statement praying to direct the Respondent management to extend the benefit of higher scale under the Flexible Complementing Scheme introduced by the Respondent by paying the arrears from 1.7.1995 or from their date of entitlement to till date to all the workmen working in Fire Cadre Department in the Respondent organization.

3. Respondent filed counter statement stating that various averments made in the claim statement has no relevance to the present reference made by the Government of India. It is further stated that Petitioner union is aware of the fact that the Flexible Complementary Scheme is withdrawn *w.e.f.* 1.2.2005 and new Recruitment and Promotion Rules have been implemented. The reference is made after the withdrawal of the said scheme, as such, the reference is not maintainable in law.

4. Petitioner union filed chief examination affidavit in lieu of their evidence and the case stands posted for cross examination of Petitioner.

5. At this stage, a memo has been filed for Petitioner union stating that Respondent has extended the benefits to the workmen as claimed by the union and therefore, Petitioner is withdrawing the claim and sought for dismissal of the case by passing a 'nil' award. In the circumstances, proceedings are closed and a 'Nil' award is passed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 फरवरी, 2014

का॰आ॰ 929.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 37/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/2/2014 को प्राप्त हुआ था।

[सं॰ एल-15025/01/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st February, 2014

S.O. 929.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 17/2/2014.

[No. L-15025/01/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 17th day of January, 2014

INDUSTRIAL DISPUTE L.C. No. 37/2005

Between :

Sri. M. Harikrishna,
S/o M. Mukundam Rao,
H.No. 4-10/190, Upperpally,
Rajendranagar,
Ranga Reddy District. ...Petitioner

AND

1. The Chairman,
   Airports Authority of India,
   Safdar Jung Airport, New Delhi-1
2. The Executive Engineer (Ele),
   Airport Authority of India,
   Hyderabad Airport, Begumpet,
   Hyderabad-500 016.
3. M/s. Gannon Dunkerly & Co.,
   Early Street, Calcutta,
   C/o Kalavathi Electrical Works,
   1-9-53/2, Alwal, Secunderabad-500 015.

4. M/s. I.C.S. Systems Ltd.,
4-135, Fatehnagar,
Hyderabad. ...Respondents

Appearances:

For the Petitioner : M/s. Ch. Indrasena Reddy, Advocate

For the Respondent : M/s M. Vijaya Kumar, I. Sambasiva Rao & D. Sreekanth, Advocates

AWARD

This is a petition filed by Sri. M. Harikrishna, the workman invoking Sec. 2A (1) and (2) of the I.D. Act, 1947 seeking for a relief declaring that the Petitioner is deemed to be continuing in service pending regularization of services, and consequently directing the respondents to pay wages from the date of termination including difference of pay of regular employee with 12% interest p.a. till the date of payment together with attendant benefits. He also sought for the following interim reliefs *i.e.,* to reinstate him into service of the 4th respondent or else where and also for directing the third respondent to pay wages pending adjudication of the dispute and from the date of oral termination *i.e.,* 17.7.2000 with interest at 12% p.a. till the date of retirement.

2. The averments made in the petition in brief are as follows:

Petitioner has been working as khalasi in the Electrical department of the 2nd Respondent since 1.7.1999. He was interviewed by the Junior Executive Engineer, of Airport Authority of India, Hyderabad in the year 1995 and was selected for employment as N.M.R. and he was allotted to work under the 3rd Respondent represented by its sub-contractor *i.e.,* Kalavathi Electrical Works. He was paid monthly salary of Rs. 1860. His signature was being taken in wage register. He used to perform duties at Rajiv Gandhi Terminal or N.T.R. Terminal as conveyor belt operator and also used to perform or assist the operation and maintenance and also to repairs of passenger baggage conveyor system; daily, weekly and annual maintenance schedule during their duty timings. He got requisite knowledge of the work of conveyor belt operating and its repair. His attendance was marked by J.E., Electrical, who is an officer of Airport Authority of India (A.A.I.) and his salary was being paid by the Airport. Therefore it is clear that he was completely under the control of the 2nd Respondent who is the principal employer. He was given identity card and his signatures were obtained in log books maintained by the contractors. He worked round the clock without a holiday or over time. He worked on par with the regular employees of the department though he was denied the facilities to which the regular employees are provided with like pay scales, holidays, weekly offs, casual leaves etc., with the expectation that his services would be regularised in future. The work is perennial in nature and Ist Respondent ought to have considered case of the Petitioner and regularised his services, after abolishing of the contract labour system by the Government of India vide notification No. S.O. 114/E dated 16.11.1999. Petitioner is qualified with respect to eligibility to hold the posts in which he worked, on a regular basis. After the system of contract labour was abolished consequent to notification issued on 16.11.1999, the AAI became direct employer eliminating the middlemen and the contractor thereby with effect from 16.11.1999 there is relationship of employer and employee between the 2nd Respondent and the Petitioner. Without complying with the rules of Contract Labour (R&A) particularly Sec. 14, *i.e.,* Procedure For Termination of Services or Sec. 25-F of Industrial Disputes Act, 1947, 4th Respondent orally terminated the services of the Petitioner from 17.7.2000 and engaged men of their choice thus depriving livelihood of the Petitioner. Aggrieved by the illegal termination of the Petition by 4th Respondent their union namely Airport Authority Kamgar Union, filed a petition invoking Sec. 2(k) of Industrial Disputes Act, 1947 before the Assistant Labour Commissioner (Central), Hyderabad but no conciliation took place. 2nd Respondent continued the contract labour system even till today, initially through the 3rd Respondent and now through the 4th Respondent. After Petitioner was terminated without notice, 4th Respondent engaged other persons in Petitioner's place, though the Respondents were specifically directed by the Hon'ble High Court of A.P. in their order dated in WVMP 3479/2000 in WPMP No. 16170/2000, not to replace the Petitioner with the third parties. The persons who were working on aero bridge were brought to work on conveyor belt by 4th Respondent. Inspite of Petitioner putting in 240 days of continuous service each year without complying with the provisions of Sec. 25-F of Industrial Disputes Act, 1947 his services were terminated. It is to be verified whether the contract is a genuine contract or it is a mere ruse or camouflage to evade compliance with various legislations so as to deprive the workers of the benefits thereunder.

3. Respondents 1 and 2 filed their counter with the averments in brief as follows:

Airport Authority of India ought to have been made a party but not the Chairman of the Executive Engineer. Prior to March, 1997 conveyor belt was not commissioned at Hyderabad airport. The date of commissioning of Rajiv Gandhi Terminal was 10.3.1997 as such, there was no need to operate the conveyor belt before that date. The contention of the Petitioner that he was engaged by AAI from 15.3.1995 onwards is totally incorrect. AAI got nothing to do with the Petitioner before 13.3.1997 as there was no conveyor belt operation till that date. Prior to 13.3.97 Petitioner might have worked under any contractor as an unskilled labour for the erection of conveyor which is not

a continuous process and which does not require any regular employment. There is no employer and employee relationship between AAI and Petitioner. Petitioner never reported to any Airport Authority of India official and AAI never marked his attendance. No payment was made by AAI to the Petitioner. AAI's involvement is limited to the general supervision of works that was being done through agency of contractors. AAI do not have any regular conveyor belt operator with whom the job of Petitioner can be compared. AAI has discontinued the operation of the conveyors. Conveyors are operated by respective airline operators. The Government of India's order dated 16.11.1999 was quashed by the Delhi High Court on 22.11.2001. Therefore, no relief can be claimed on the strength of said Government order. At the present AAI is getting the periodic maintenance of the conveyors done through agencies having technical expertise in the field. There is no regular deployment of the staff of AAI for this purpose. The order of Hon'ble High Court of A.P. dated 19.4.2001 referred in the petition does not speak of continuation of the labour. At present 4th Respondent is carrying out periodic maintenance of conveyor belt at Hyderabad airport. There is no industrial dispute what so ever that could be raised against the Respondents No. 1 and 2.

There is no post as khalasi, helper, electrician, fitter etc., in Respondent's organization. Conveyer belts have never been operated by the Respondents No. 1 and 2 and the same are being operated by the airlines on their own. No operator is required for Respondent 1 and 2. AAI is responsible only for the periodic maintenance of the conveyor belts. For which no operator is required. The contention of the Petitioner that AAI deployed regular employees for operating conveyor belt is not correct. Petitioner never approached Assistant Labour Commissioner (Central), Hyderabad. Petition is liable to be dismissed.

4. By virtue of order dated 9.5.2007 3rd Respondent has been set exparte and by virtue of order dated 7.3.2007 4th Respondent has been set exparte by this forum.

5. Since main case itself is being disposed off, the court need not consider the interim reliefs sought for.

6. To substantiate the contentions of the workman he examined himself as WW1 by filing his chief examination affidavit. But he was not subject to any cross examination by the Respondent. As Respondent was not showing any interest to cross examine the said witness, his right to cross examine the said witness forfieted by virtue of order 29.7.2011. No evidence was adduced for the Respondent.

7. Heard either party.

8. The Point that arise for determination is:

Whether the Petitioner is entitled for the main reliefs sought for?

9. Point:

The workman invoked Sec. 2 A (1) and (2) of the I.D. Act, 1947 and filed this petition seeking for a relief of declaration that the Petitioner is deemed to be continuing in service pending regularization of services and consequently to direct the respondents to pay wages to him from the date of termination including difference of pay of regular employee with 12% interest till date of payment. This is a very vague relief sought for. It can be said so since no where in the petition, Petitioner claimed that he initiated any proceeding seeking for regularization of his services. In such case seeking for declaration that he is deemed to be continuing in service pending regularization of his services does not arise. Likewise, the consequential direction to the respondents sought for, to pay him any wages, also does not arise.

10. Further more, a careful perusal of the material made available on the record including the pleading of the Petitioner, giving rise to a conclusion that Petitioner's claims themselves are vague. Petitioner, on one hand is claiming that he is an employee of the 2nd Respondent. On the other hand he is claiming that he is an employee of third Respondent, having allotted by the 2nd Respondent to work under the 3rd Respondent. 2nd Respondent is an executive engineer of AAI. 3rd Respondent is a private company. How 2nd Respondent can engage a worker and allot him to work under 3rd Respondent is a question which remained unanswered.

11. Further more, Petitioner is relying upon a document dated 5.6.2000 said to have been issued by one Kalavathi Electricals which is to the effect that Petitioner worked in their concern and has been associated with maintenance of baggage conveyor system at Rajiv Gandhi Terminal building or N.T.R. Terminal building at Hyderabad Airport. Petitioner claimed that said Kalavathi Electrical works is sub-contractor for the 3rd Respondent. But, the certificate issued by said Kalavathi Electrical Works does not show that the said firm is a sub-contractor to the 3rd Respondent. In such case how the Petitioner, who appeared to have worked for said Kalavathi Electrical Works can claim that 3rd Respondent got anything to do with the work done by him is also a question which remains unanswered. As it is the contention of the Petitioner himself, that Petitioner worked for Kalavathi Electrical Works a sub-contractor of 3rd Respondent, 3rd Respondent will not have anything to do with him. Kalavathi Electrical works is his employer. The certificate issued by Kalavathi Electrical Works dated 5.6.2000 clearly indicates that Petitioner has been working in their concern.

12. In the giving circumstances, question of either of the Respondents 1 to 4 terminating services of the Petitioner does not arise.

13. In view of the fore gone discussion, it can safely be held that there is no industrial dispute to be dissolved,

existing among the parties to this petition and that Petitioner is not entitled for any of the reliefs sought for.

14. **Result :**

In the result, Petition is dismissed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Hari Krishna	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 930.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, रायपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/58/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं. एल-40012/18/97-आई आर (डी यू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT/LC/R/58/98) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Telecom, Raipur and their workman, which was received by the Central Government on 21/02/2014.

[No. L-40012/18/97-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/98

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Rajpal Verma,
Q. No. 96, Janata Colony,
Gudiyari, Raipur (MP) ...Workman

Versus

General Manager,
Telecom,
Distt. Raipur (MP) ....Management

AWARD

(Passed on this 28th day of January 2014)

1. As per letter dated 9-3-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/18/97-IR(DU). The dispute under reference relates to:

"Whether the action of the General Manager, Telecommunication Distt. Raipur (MP) in terminating the services of Shri Rajpal Verma w.e.f. 1-10-95 is legal and justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of claim at Page 2/2 to 2/8. Case of workman is that he was working as full time labour on muster roll from 10.1.89 with IInd party No. 4. He was continuously working till 1-10-95 for the period of 5 year 10 months. His services were terminated orally from 12-10-95 without assigning reasons, without notice. His services were terminated verbally. Workman requested him to continue in service was not considered. Termination of his service is illegal, arbitrary in violation of Article 311 of Constitution. No opportunity was given for his defence. IInd party avoided attendance before Labour Court. Workman prays for his reinstatement with back wages. That termination of his services is illegal.

3. IInd party filed Written Statement at Page 10/1 to 10/2. Claim of workman is denied outright. The case of IInd party is that management of Telecom Deptt. had undertaken an expansion programme in order to expand telecom facilities all over the State of MP. In order to achieve its object, the said expansion programme required laying of telephone cables/lines and errection of poles etc. The said work was of temporary nature. Workman was engaged as casual labour. His services were subject to availability of work. Workman never completed 240 days continuous service in a year. The Telecom deptt. framed scheme for regularization of casual labour. Workman does not fulfill conditions prescribed in said scheme. Workman is not entitled for temporary status. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the General Manager, Telecommunication Distt.	In Affirmative

	Raipur (MP) in terminating the services of Shri Rajpal Verma w.e.f. 1-10-95 is legal and justified?	
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

5. Though workman is challenging termination of services for denial of opportunity for hearing, termination without notice or paying compensation is illegal. Workman has not participated in reference proceeding. His evidence is closed on 6-9-2011 as workman failed to adduce evidence in support of his claim. Management filed evidence by way of affidavit of Shri P.R. Sahu. Said witness is not cross-examined by the workman. Evidence of witness remained unchallenged. I do not find reason to disbelieve evidence of management's witness. Claim of workman is not substantiated by any thread of evidence. Therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:

(1) Action of the General Manager, Telecommunication Distt. Raipur (MP) in terminating the services of Shri Rajpal Verma w.e.f. 1-10-95 is legal.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, ग्रे आयरन फाउंड्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/174/96) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं. एल-14011/09/94-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT/LC/R/174/96) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Grey Iron Foundry, Jabalpur and their workmen, which was received by the Central Government on 21/02/2014.

[No. L-14011/09/94-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/174/96

Presiding Officer, SHRI R.B. PATLE

The Secretary,
G.I.F. Employees Union,
Grey Iron Foundry,
Jabalpur ....Workman/Union

Versus

General Manager,
Grey Iron Foundry,
Jabalpur ....Management

AWARD

(Passed on this 30th day of January 2014)

1. As per letter dated 30-8-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14011/9/94-IR(DU). The dispute under reference relates to:

''क्या प्रबंधतंत्र ग्रे आयरन फाउन्ड्री, जबलपुर (म॰प्र॰) में प्रबंधकों द्वारा निम्नलिखित श्रमिकों को जो कि फरनेसमेन (जनरल) के पद पर वेतनमान रुपये 210-290 में नियुक्त हुये थे उन्हें फरनेसमेन जनरल के पद स्कील्ड केटेगरी में वेतनमान 260-400 में दि॰ 16.10.81 से अपग्रेड न करने की कार्यवाही न्यायोचित है अथवा फरनेसमेन जनरल के पद पर तीन वर्ष पूर्ण कर लेने की दिनांक से उन्हें वेतनमान 260-400 में मेल्टर (फेरस एन्ड नान फेरस) के पद पर स्कील्ड केटेगरी में अपग्रेड न करने की कार्यवाही न्यायोचित है। यदि नहीं तो संबंधित कर्मकारगण किस अनुतोष के हकदार हैं?''

2. After receiving reference, notices were issued to the parties. Grey Iron Foundry Employees Union submitted statement of claim at Page 2/1 to 2/4. The case of Union is that the workmen in the matter are employees of Grey Iron Foundry i.e. IInd party. They were appointed as labour between 1974 to 1979. Thereafter Trade Test of Furnaceman (General) was passed by them. Those employees were appointed as Furnaceman (General) in pay scale Rs. 210-290 (Old pay scale). That in IVth Pay Commission, the pay of employees was revised. Central Government has appointed Expert Classification Committee as per the recommendation of IIIrd Pay Commission, for classification of the grade/trade of all industrial trades in Ordnance Factories including the trade of these workmen. That nature of work of Furnaceman (General) in all Ordnance Factory is similar. The management of Ordnance Factory are controlled by Chairman, Ordnance Factory Board, Calcutta. That in some ordnance factories, the Furnaceman (General) trade has been given skilled category from 16-10-81 whereas

the same has been denied for the workmen of the Grey Iron Foundry. That SRO 357 of 1979 was applicable to industrial workmen employed in Ordnance Factories. As per this SRO, only one trade as Furnaceman (General) has been prescribed at Sl. No. 293 in the Pay Scale of Rs. 210-290. The management of Ordnance Factories has created a trade known as Furnaceman (Porer) which is a sub-trade of Furnaceman (General). From 16-10-81, management upgraded this sub-trade Furnaceman (Porer) in the skilled category at the pay scale of Rs. 260-400. The Furnaceman (General) was denied said upgradation.

3. Management had constituted anomalies-committee to settle the problem and arising in pay fixation of the trade/ grades after the E.C.C. Report. Said anomaly Committee in its finding in Para 7.2 have decided that the semi-skilled jobs in other Defence Establishment whose nomenclature are comparable with the job already studied should also be elevated to skilled category in the pay scale of Rs. 260-400 without any further study. Accordingly in some factories the Furnaceman (General) trade has been upgraded as skilled category trade, such benefit is not given to the workmen of GIF. It is further submitted that Ordnance Factory Board constituted another committee which was known as "Guha Committee". The said committee has also accepted that nature of work of the Furnaceman (General)/ Semi-skilled Furnacemen (Porer), Furnaceman Charger, Furnaceman Leading, Steel Melter, Cupolaman are similar, equal and identical and these trades are grouped together and given a common designation of Melter (Ferrous and Non-Ferrous). According to Guna Committee Furnaceman (General) who completed 3 year service in their trade should have been upgraded as Melter skilled from back date. No action is taken on said report. That the junior employees to the workmen in Furnaceman (Porer) are placed higher in seniority list, some of the juniors are promoted to higher grades. Union is praying for suitable directions to the management.

4. IInd party management filed written Statement at page 10/1 to 10/5. Claim of Union is denied. It is submitted that Shri I.C. Tiwari and another workmen were initially appointed as labour in the year 1978 in Grey Iron Foundary. During course of their service, they were promoted to Furnacement (General) in the pay scale of Rs. 210-290 after qualifying the trade test from 2-5-1980. The post of Furnaceman (General) is of semi-skilled post. The Grey Iron Foundry is an establishment under Ministry of Defence. It is governed by rules and regulations framed by Govt. of India. The fixation/revision of pay scales lies with pay commission and other bodies subject to acceptance by Government of India. The demand for revising the pay scale by Union cannot be entertained as General Manager of Factory has no authority to grant such pay scales to group of employees. That Shri I.C. Tiwari and 25 others holding post of Furnaceman (General), GIF are claiming promotion to higher scale in the category of skilled employees in the pay scale of Rs. 260-400. Said issue was raised earlier before CAT, Madras. That CAT, Madras held that it is not job of Tribunal to evaluate the job contents in Ordnance Factory. IInd party referred to judgment in Original Application 677 and 701 of 1986 by CAT, Madras and Apex Court judgment in SLP No. 3999 and 4024 of 1988. IInd party submits that there is no justification of grant of higher pay scale for Furnaceman (General) of GIF with Furnaceman (Porer) and Furnaceman (General) of O.F.A. That for rationalization of trades and grades in Ordnance Factories, Guna Committee was formed. Such Committee reduced the number of trades in Ordnance Factory to provide avenues to employees in deed end trades by merging them with main line trades after following the procedure laid down in S.R.O. The report of ECC was for purpose of sorting out recommendation of IIIrd Pay Commission. Guha Committee was appointed for Ordnance Factory itself. There is no logic in linking those reports. The object of Guha Committee was to provide avenues of promotion to the incumbents of dead trade by merging them with nearby akin trades after trade test. IInd party refers to judgment of Principal Bench of CAT, New Delhi and judgment by Hon'ble Apex Court. That executive instruction can make provision only with regard to a matter which was covered by the rules and such Executive instruction could not over-ride any provision of the rules. That Guha Committee recommendations cannot supersede SRO provision. That nowhere it is provided that Furnaceman (General) is semi-skilled grade or any one else could give higher pay scale of Rs. 260-400 automatically. On such ground, IInd party prays that award be passed in its favour.

5. Workman filed rejoinder at Page 11/1 to 11/3 reiterating their contentions in the Statement of Claim. That Pay Commission fixed pay of workman according to their trade/ grade which is done by the management. Ist party prayed for direction to IInd party for producing ECC-Guha Committee Report.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of Grey Iron Foundry, Jabalpur in denying to upgrade the pay scale of Furnaceman (General) from Rs. 210-290 to Pay Scale Rs. 260-400 w.e.f. 16-10-81 is justified?	In Affirmative
(ii) Whether the action of the management in not upgradig the Furnaceman	In Affirmative

	(General) on completing 3 years working to the post of Melter in pay scale Rs. 260-400 is justified?	
(iii)	If not, what relief the workman is entitled to?"	Workmen are not entitled to relief prayed.

REASONS

7. Terms of reference relates to denial of skilled category Pay Scale Rs. 260-400 to Furnaceman (General) in Pay Scale 210-290 by the management of IInd party. Workmen Dilip Kumar, Biharilal, Tokram, I.C. Tiwari filed identical evidence on affidavit in support of their claim that they were appointed as Furnaceman (General) in Grey Iron Foundry in pay Scale Rs. 210-290 from 1-10-82, 1-4-81, 1-1-81 respectively. That in some other Ordnance Factories, Furnaceman (General) has been given higher Pay Scale Rs. 250-450. That the nature of work of Furnaceman (General) in all places are same. That the nature of work of Furnaceman (Porer) and Furnaceman (General) are same. Workman Dilip Kumar in his cross-examination says he was selected as Furnaceman (General) on 2-5-80 having pay scale 210-290. That pay of Furnaceman (Porer) was same. That pay of Furnaceman in Ordnance Factory Khamaria is Rs. 260-400. Shri Tokram in his cross-examination says he was initially appointed as labour in 1978 then he was promoted as Furnaceman (General). That work of Furnaceman (General) and Furnaceman (Porer) is same. Designations are given as per the work. Written order was not given. Oral directions were given about their work. That after ECC report Furnaceman (Porer) was given pay scale 260-450). He claims ignorance about Guha report. That Pay is fixed as per working of Furnaceman (General)/ Furnaceman (Porer). No written order was given to him working as Furnaceman (Porer).

8. Shri I.C. Tiwari in his cross-examination says that he received education upto 8th standard. He was first appointed as mazdoor in 1978. He was promoted around 1980-81 as Furnaceman (General) in Pay Scale 210-290. It was semi-skilled category. The Factory comes under Defence Ministry. The Pay revision is made by fixation Committee. He claimed that from work of Furnaceman (General) and Furnaceman (Porer) are of same category. They are also known as loaderman covered in Pay scale 260-400. That he had not received written order for working as Furnaceman (Porer). He had complained about it to the management. That he continued to work as Furnaceman (Porer) and claims pay of said category.

9. Other workman Francis, Mahmood Aslam. Nandlal, Madhukar Rao, Sevaram, Narmad Prasad though filed their affidavit of evidence, they did not make available for their cross-examination, therefore their evidence cannot be considered.

10. Management filed affidavit of evidence of Seema Gupta. Management's witness has stated that Shri I.C. Tiwari and 25 others holding post of Furnaceman (General) of Grey Iron Foundry represented though Union for higher pay scale skilled category employees. That the adoption of Point rating system, ECC has evaluated the job contents of various trades. As a result of evaluation Furnaceman (General), and Furnaceman (Porer) were awarded the pay scale of Rs. 260-400 considering the gravity of risk and arduous nature, Furnaceman (General) was given the pay scale of Rs. 210-290. For rationalization of trades and grades in ordnance Factories, Guha Committee was formed. The basic purpose of said committee was to reduce the number of trades in Ordnance Factories. The purpose of ECC was of sorting out anomalies arising out of the recommendations of 3rd Pay Commission and applicable to Ministry of Defence, management's witness was not cross-examined. His evidence remained unchallenged. IInd party has produced copy of ECC report. The pay scales for semi skilled are given Rs. 210-290, pay scale of skilled category 260-400. The Guha Committee report is also produced. Pay scale of Furnaceman (General) is shown Rs. 210-290. No change was proposed on revision. The scale of Furnaceman (leading) is shown Rs. 260-400. Guha Committee is expert Committee for rationalizing trades.

11. Though the Union has pleaded that in some Ordnance Factories, pay scale of Furnaceman (General) is given pay scale Rs. 260-400, no such evidence is produced. IInd party has produced copy of award in R/64/96. Identical claim of Union was not accepted. I have carefully gone through the judgment. It was observed that Union of India is not implemented as party. That Competent Authority to grant pay scale to the group of employees is Union of India. After such discussion, claim was rejected. From the evidence discussed above, Union has not establishment that Furnaceman (General) are entitled to get pay scale Rs. 260-400. Therefore I record my finding in Point No. 1, 2 in Affirmative.

12. In the result, award is passed as under:—

(1) Action of management of Grey Iron Foundry, Jabalpur in denying to upgrade the pay scale of Furnaceman (General) from Rs. 210-290 to Pay Scale Rs. 260-400 *w.e.f.* 16-10-81 and is not upgrading the Furnaceman (General) on completing 3 years working to the post of Melter in pay scale Rs. 260-400 is justified.

(2) Union is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 932.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार असिस्टेंट इंजीनियर, डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, बिलासपुर के प्रबंधतंत्र के संबद्ध

नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/87/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/149/90-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT/LC/R/87/91) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Asstt. Engineer, Department of Telecommunications, Bilaspur and their workman, which was received by the Central Government on 21-02-2014.

[No. L-40012/149/90-IR(DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/87/91

SHRI R.B. PATLE, Presiding Officer.

Shri Anil Kumar Singh,
S/o Shri Ram Sunder Singh,
Village and Post Ram Nagar Kot,
Distt. Sultanpur (UP) ....Workman

Versus

Asstt. Engineer,
Deptt. of Telecommunication,
Satellite Project,
SECL Compound,
Bilaspur (MP) ...Management

AWARD

(Passed on this 30th day of January 2014)

1. As per letter dated 19-4-91 and corrigendum dated 13-8-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-40012/149/90-IR(DU). The dispute under reference relates to:

"Whether the management of Department of Telecommunication, Office of Asstt. Engineer, Satellite Project, Bilaspur (MP) is justified in not granting temporary status to Shri Anil Kumar Singh, a casual labour *w.e.f.* 1-1-85 and in terminating his services *w.e.f.* 25-2-90? If not, to what relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Pages 9/1 to 9/3. The case of workman is that he was employed as casual labourer from 1-1-1985 at Sultanpur with the IInd party Deptt. of Telecommunication. He was working till 25-4-85. Thereafter he was again taken back on duty by the IInd party in May 1988 and posted at Srinagar, Distt. Pudi. Ist party was continued on work till September 1988. Then he was transferred to Joshi Math from October 1988. He continued to work till September 1989. Thereafter he was transferred to Bilaspur and after relieving from Joshi Math, the workman joined his services on 22-9-89. He continued to work at Bilaspur till 24-2-90.

3. Workman submits that he had completed 240 days continuous service. His services were terminated from 25-2-90 without assigning reasons. The termination of his service is illegal and violation of Article 14, 16 of constitution. That though he had completed 240 days continuous service, he was not paid retrenchment compensation. That IInd party retained junior employees Jeetram, Ram Prakash Rajak, Hemant Kumar, Krishna Kumar Sahu. One Lalit Kumar was appointed after termination of service of workman. IInd party violated Section 25-G of I.D. Act. He further submits that he had submitted application before ALC, Bilaspur claiming temporary status. IInd party got annoyed and terminated his services from 25-2-90. On such grounds, workman is praying for setting aside his termination and allow his reinstatement with back wages.

4. IInd party filed Written Statement at Pages 10/1 to 10/3. The claim of workman is denied outright. IInd party claims ignorance about working of workman at Shrinagar, Gadwal (UP). It is denied that Ist party workman was continuously working. It is submitted that the organization of IInd party installing Satellite Station was started in August, 1989. The project is not a recruiting organisation and casual labours are engaged from the local TDE, Bilaspur. As said exchange expressed its inability to provide casual labour, casual labour had to be engaged for a short duration. Workman was one of such casual labour engaged for the project. Workman was not transferred from Joshimath to Bilaspur. That workman had not completed 240 days countinuous service. He is not entitled to retrenchment compensation. That workman was engaged for specific work of protection of satellite antenna kept on the ground. When said antenna was lifted on tower work for which he was engaged is ceased. Said work was of temporary nature. Workman was found missing at his residence when he was called for work, so another labour was engaged. All other contentions of workman are denied. It is submitted that workman is not entitled for absorpotion. His discontinuation is covered under Section 2(oo)(bb) of I.D. Act. IInd party prayed for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the management of Deptt. of Telecommunication, Office of Asstt. Engineer, Satellite Project, Bilaspur (MP) is justified in not granting temporary status to Shri Anil Kumar Singh, a casual labourer *w.e.f.* 1-1-85?	In Affirmative
(ii)	Whether the action of the management of Deptt. of Telecommunication in terminating the services of workman *w.e.f.* 25-2-90 is justified?	In Affirmative
(iii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The terms of reference relates to denial of temporary status to workman Shri Anil Kumar Singh and legality of termination from service *vide* corrigendum. In his statement of claim, workman submits that his services are terminated without paying retrenchment compensation, without any notice. Termination from service is in violation of Section-25-F, G, H of I.D. Act. The evidence of workman was recorded. He has stated that he was discontinued from work from 25-2-90. He was not given notice, retrenchment compensation was not paid. That he was engaged from 1-1-1985. As stated above, his evidence is also beyond terms of reference. In his cross-examination, workman denies that the work was completed. He admits that the employment is provided through Employment Exchange Office. The evidence of workman is absolutely silent about any rules, regulations occurring him status of temporary employee. Workman has not produced any document about completing 240 days continuous service with IInd party.

7. Though the workman has challenged termination of Section 25-F, G of I.D. Act, evidence of workman about completing 240 days continuous service is not supported by any document. Any other witness is not examined therefore workman has not established completion of 240 days continuous service. Therefore he is not entitled to protection. The evidence on record is not sufficient to grant status of temporary employee claimed by workman as per the terms of reference, therefore I record my finding in Point No. 1 & 2 in Affirmative.

8. In the result, award is passed as under:—

(1) The action of the management of Deptt. of Telecommunication, office of Asstt. Engineer, Satellite Project, Bilaspur (MP) in not granting temporary status to Shri Anil Kumar Singh, a casual labourer *w.e.f.* 1-1-85 and in terminating his services *w.e.f.* 25-2-90 is legal and proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रीजनल डायरेक्टर, रीजनल सेंटर ऑफ आर्गेनिक फार्मिंग, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/94/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/40/07-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/94/2007) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Regional Director, Regional Centre of Organic Farming, Jabalpur and their workmen, which was received by the Central Government on 21/02/2014.

[No. L-42012/40/07-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/94/07

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Rajesh Kumar Sharma,
S/o Shri Koushal Kishore Sharma,
House No. 1645, Phootatal,
Bahai Mohalla,
Hardoul Mandir,
Jabalpur **....** Workman

Versus

Regional Director,
Regional Centre of Organic Farming,
(Formely known As Regional Biofertiliser
Development Centre), 2, 1 Heera Bhawan,
Andhrtal, Jabalpur **....** Management

AWARD

(Passed on this 28th day of January, 2014)

1. As per letter dated 11-9-07 by the Government of India, Ministry of Labour, New Delhi the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42012/40/07-IR (DU). The dispute under reference relates to:

"Whether the action of the management of Regional Centre of Organic Farming, Jabalpur in retrenching their workman Shri Rajesh Kumar Sharma *w.e.f.* 31-8-2006 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at pages 5/1 to 5/4. Case of workman is that he was appointed as casual labourer *w.e.f.* 9-5-94. He was paid wages Rs. 33.93 per day by IInd party. His name was sponsored through Employment Exchange. He had continuously worked more than 240 days and acquired status of permanent employee. In order to deny claim of regularization, workman was asked to sign in payment voucher in name of Shri Bhagwandas. His services were terminated from 19-4-95. The dispute was raised as per R/169/96 to this Tribunal. *Vide* award dated 28-5-99, management was directed to reinstate him with full back wages. Award was challenged by IInd party filing Writ Petition No. 4427/99. The writ was admitted subject to compliance of Section 17(b) of I.D. Act. He was reinstated by workman *w.e.f.* 27-4-00. He was not paid back wages. Writ Petition was dismissed by the Hon'ble High Court on 28-2-06.

3. Workman submits that he requested management to implement award passed by this Tribunal after dismissal of the Writ petition. The management did not comply with award. Showcause notice was issued by Dy. CLC dated 28-7-06 for initiating prosecution under Section 29 of the I.D. Act. The management decided to terminate his services. His services were terminated from 31-8-06 without justified ground. That termination of his services is illegal. His services were terminated by management on the ground that Central Govt. discontinued/closed biofertilizer project. Workman submits that his office is still working. There are vacant post of Class-IV employees. His services were terminated after 12 year service in violation of Section 25-F of I.D. Act. Workman prays for setting aside his termination and he be reinstated with back wages.

4. IInd party filed Written Statement at page 7/1 to 7/3 IInd party raised preliminary objection that reference is not tenable. The applicant workman was serving as part time daily wager in Regional Centre of Organic Farming, Jablapur which is a research centre. That the service matters relating to Central Govt. employees falls within jurisdiction of CAT as per Act of 1985.

5. Ist party workman was engaged on daily wages on 9-5-94. His services were terminated in 19-4-95. Termination of workman was challenged in R/169/96. The award was passed on 18-5-95 directing reinstatement of workman with back wages allowing 12% interest per annum. The award was challenged in Writ Petition No. 4427/99. Workman was reinstated in compliance of Section 17-B of I.D. Act. Writ petition was dismissed on 28-2-06 treating termination of workman as retrenchment. That as per the award, workman was paid retrenchment compensation, wages are also paid. IInd party submits that services of workman are terminated from 31-8-06 is legal. Workman is not entitled to relief prayed by him.

6. Workman filed rejoinder on 13-4-2010 reiterating his contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Regional Centre of Organic Farming, Jablapur in retrenching their workman Shri Rajesh Kumar Sharm *w.e.f.* 31-8-2006 is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. In support of his claim, workman filed affidavit of his evidence. He has stated facts of his appointement by IInd party as casual labour from 9-5-94 and discontinuation of his service from 19-4-95. That the termination was challenged by him in the reference. The reference was allowed. IInd party filed Writ Petition against the said Award. That his services were terminated from 31-8-06 illegally without notice, without paying retrenchment compensation. The reason given for termination that biofertilizer plant is closed. Termination of his services is in violation of Section 25-F of I.D. Act. In his cross-examination workman says he was given appointment order, its copy is not produced. He had not requested for giving letter of appointment, he has not produced documents about completion of 240 days service. He has not produced documents about asking him to sign payment voucher in name of Shri Bhagwandas. He was asked to sign in name of Shri Bhagwandas in 1995. On other days he was paid salary with his signature. That he was continuously working for

12 years. Attendance sheet is not produced. More than 100 officers and employees were working he has not produced appointment letter of any of them. Permission of Central Government was not obtained for closing the centre.

9. Mangement filed affidavit of witness Shri Rajesh Kumar Sharma. The witness has narrated the course of litigation relating to the termination of services of Ist party workman, the award challenged in Writ Petition. Workman was paid back wages with interest, compensation, one months wages in lieu of notice and cost Rs. 1000. The copy of award in R/169/96 is produced. The award has been confirmed by the Hon'ble High Court dismissing Writ Petition No. 4427/99, copy of judgement in Writ Petition is produced. Therefore legality of earlier termination cannot be decided in present case, the same has received finality. The services of workman are terminated as per notice dated 31-8-06 Exhibit W-1. As per said notice, workman was paid arrears of wages Rs. 6565 interest on arrears as per CGIT order Rs. 5714, compensation under Section 25-F Rs. 12,102. The period of retrenchment compensation is not disclosed, paid wages for August 06 Rs. 2017, wages in lieu of notice Rs. 2017 and cost Rs. 1000. Learned counsel for workman Mr. Mishra emphasized that copy of said notice is not forwarded to the competent authorities as per section 25-F of I.D. Act Section 25-F (C) of I.D. Act provides- "Notice in prescribed manner is served on the appropriate Government or such authority specified by the appropriate Government by Notification in official gazette."

The notice Exhibit W-1 is not disclosing period. Said notice in prescribed form is not sent to the Competent Authority provided under Section 25-F (C) and therefore the termination of services of workman is in violation of Section 25-F(C) of I.D. Act. For above reasons, I record my finding in Point No. 1 in Negative.

10. **Point No. 2—**In view of my finding in Point No. 1 that termination of services of workman is illegal, question arises whether the workman is entitled reinstatement with back wages. The services of workman are terminated after dismissal of Writ Petition No. 4427/99. In compliance of Section 17-B, workman was reinstated during pendency of Writ Petition. For the same ground, services of workman are terminated *vide* Exhibit W-1 from 31-8-06. The termination is in violation of Section 25-F of I.D. Act. The evidence of workman is not clear what he was doing after termination of services from 31-8-2006. The management has also not adduced evidence about workman was in gainful employment. Considering those aspects, reinstatement of workman with 50% back wages will be appropriate. Accordingly I record my finding in Point No. 2.

11. In the result, award is passed as under:—

(1) Action of the management of Regional Centre of Organic Farming, Jablapur in retrenching their workman Shri Rajesh Kumar Sharma *w.e.f.* 31.8. 2006 is illegal.

(2) Mangement is directed to reinstate workman with 50% back wages with continuity of service.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल जनरल मेनेजर, टेलिकॉम, भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 47/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/40/2008-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 934.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (I.D. No. 47/2009) of the Central Government Industrial Tribunal/Labour Court No. 1 Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Principal General Manager, Telecom, BSNL and their workman, which was received by the Central Government on 24/02/2014.

[No. L-40012/40/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 47 of 2009. Reference No. L-40012/40/2008-IR(DU) dated 04-08-2009 Madan Lal, S/o Sh. Sanwaru Ram, H. No. 160, Indira Colony, Manimajra UT, Chandigarh.

.... Applicant

Versus

1. The Principal General Manager, Telecom, BSNL, Sector 18-B, Chandigarh.

.... Respondent

APPEARANCES :

For the Workman: Sh. P.K. Longia Advocate.

For the Management: Shri Anish Babbar Advocate.

AWARD

Passed on : 11.02.2014

Central Govt. *vide* notification No. L-40012/40/2008-IR (DU) dated 04.08.2009 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the action of the management of Principal General Manager, Telecom, BSNL, Chandigarh in terminating the service of Shri Madan Lal *w.e.f.* 24/7/1998, is legal and justified? If not, what relief the workman concerned is entitled to?"

2. The workman in his claim statement pleaded that he was directly engaged by the management on 28.05.1997 as casual clerk in Commercial Office Mohali and ordered to be shifted to Commercial Office Panchkula *w.e.f.* 01.04.1998. His work and conduct was satsfictory. On 24.07.1998, his services have been terminated with verbal order without any reason. It came to the notice of the workman that his services were terminated on the allegation that he was found involved in forging documents in connection with the issuing of new telephone connections. It is further pleaded by the workman that no notice was given to him and no compensation was paid before his termination. It is further pleded by the workman that a FIR was lodged by the management against five persons including the workman on 08.08.1998, and a case was lodged in the court of Additional Chief Judicial Magistrate, Panchkula on 20.01.2000. And after evidence in the criminal case, the charges were not proved against the workman and all of them have been acquitted. It is pleaded by the workman that his termination is against the mandatory provisions of the I.D. Act. He prayed for his reinstatement with full back wages and other consequential benefits.

3. The management filed reply, preliminary objection has been taken that the claim is barred by limitation as the workman was disengaged in the year 1998 but he raised the dispute in the year 2009. The workman was engaged on need basis not according to the recruitment rules and he has not locus standi to raise the dispute. On merits the management pleaded that workman engaged as labourer on need basis and was being paid as per the job assignment. He was deployed at Mohali but his services however were utilized on need basis at Panchkula. It is further pleaded by the management that the workman was found involved in forging certain documents for providing new telephone connection against which the workman was engaged was completed and he was disengaged as no more work was available and regular incumbents were deployed on the job. The workman never completed 240 days, therefore the provisions of I.D. Act are not attracted and notice or retrenchment compensation was not required to be paid. He was not disengaged due to his involvement in a criminal matter. Rather he was disengaged due to the fact that no work was available for him. Therefore, question of termination does not arise. Criminal case was registered much after his disengagement on 08.08.1998. The workman was not acquitted of merits. It is pleaded by the management that no case is made out in favour of the workman. And the reference may be answered against the workman.

4. The workman filed replication reiterating the claim made in the claim statement. It is pleaded in the reapplication that workman has very much completed 240 days and management violated the provisions of I.D. Act 1947.

5. In evidence, workman filed his affidavit. The workman also relied upon Ex. W2 which is experience certificate. Photocopies of W3 to W18 which are the attendance sheets from May 1997 to July 1998, showing that the workman has worked for different period and completed 240 days in a calendar year.

6. The management in evidence filed affidavit of Ashok Kumar as Ex M1. In cross-examination, the witness of the management stated that he has not personally observed the work of workman in Mohali and Panchkula and he is deposing on the basis of the documents. He further stated that he just having a copy of FIR and no other document is available.

7. I have heard the parties, gone through the evidence and record of the case.

8. During oral arguments learned counsel for the workman submitted that workman has continuously worked with the management from May 1997 to 24.07.1998 and his services were terminated without giving one month notice or one month pay in lieu of notice retrenchment compensation, which is in gross violation of Section 25Fof the I.D. Act. It is further submitted during the arguments by the learned counsel for the workman that after the disengagement of the workman junior had been retained in service. The management is legally bound to comply with the provisions of Section 25F of the I.D. Act and other provisions of I.D. Act. The management has violated the mandatory provisions, therefore, the workman is entitled to be reinstated in service with full back wages and other consequential benefits.

9. The learned counsel for the management during arguments submitted that the workman has no locus standi

to file the case. His services were not terminated due to the criminal case registered against him, but due to the reason that no work left to be done by the workman, and thus he was disengaged. It is further submitted during arguments that as the workman has not put in 240 days service, he was not entitled to be paid, retrenchment compensation or one month pay in lieu of notice. The learned counsel for the management prays for the rejection of the claim of a workman.

10. During the arguments representative of the management raised preliminary objection submitting that claim petition filed by the workman is barred by limitation. As the workman was disengaged in the year 1998 and present dispute has been raised in the year 2009. Counsel for the workman refuted this submission and argued that the workman was disengaged on 24.07.1998 and FIR was lodged against the workman including some other persons on the basis of FIR, workman was facing criminal trial in the court of Additional Chief Judicial magistrate, Panchkula in the criminal case No. 44/52901R0011232005, and after facing the criminal proceedings for 7 years, the workman was acquitted by the court vide judgment dated 01.02.2007 in the criminal case. Since then the workman is seeking his reinstatement with the management but the management did not allow him to join. Thereafter the workman had to move before the Assistant Labour Commissioner (Central) i.e. Conciliation Officer and after failure of the conciliation proceedings. The Ministry of Labour has referred the present dispute to this tribunal for the adjudication. In the present circumstances, the claim of the workman is not barred by the limitation.

11. The second preliminary objection raised by the management is that claim petition against the BSNL is not tenable as the workman was never engaged by BSNL, BSNL Ltd. came into existence in October, 2004, when the workman was already disengaged. From the array of the claim statement it is clear that the respondent No. 1 has been arrayed as General Manager BSNL and Commercial Officer Department of Telecom, Mohali and Commercial Officer Telecom Department, Panchkula.

12. It is well settled that where an establishment is renamed or merged in some other company, then liabilities and assets automatically vested to the successor establishment. In these circumstances the preliminary objections taken by the management is without any substance.

13. Management also submitted that the workman was engaged as casual labour clerk and he was not recruited as per recruitment rules of the management. In this regard, workman submitted that the workman was working with the management as daily wages clerk. A certificate issued by the Commercial officer Department of Telecom, SCF 115, Phase-7, Mohali, dated 31.03.1998, Commercial Officer had certified that workman Madan Lal was working as daily wages clerk from 28.05.1997 to 31.03.1998.

14. This certificate was issued on 31.02.1998, management's witness MW1 Ashok Kumar DET legal Telecom in cross-examination clearly stated that he has not personally observed the workman. He has no personal knowledge of the case. He never seen the workman and he is deposing on the basis of the documents. He is only having FIR lodged against the workman. Workman in his statement, before this tribunal admitted that there was no advertisement of the post against which he was working. His name was not sponsored by Employment Exchange and no appointment letter was given to him. Workman in his statement also admitted that he was engaged at Panchkula afresh. Workman also admitted that no junior to him are working in the department and no person was engaged after his termination. Workman also stated that he is doing marketing work and he is earning about Rs. 2,500.

15. From the submissions of the parties and from the perusal of documents and evidence on record it is clear that workman was working as casual wages clerk on daily wages from 28.05.1997 to 24.07.1998. While working with the management FIR was registered against the workman along with four other persons, and after criminal trial, workman was acquitted vide judgment dated 01.02.2007 by the Additional Chief Judicial Magistrate, Panchkula.

16. Workman was not allowed to work after 01.02.2007, and the workman was not given any notice pay and retrenchment compensation at the time of his disengagement. No reason was assigned to the workman for his disengagement. The workman aslo admitted that his recruitment was not as per recruitment rules. Hence so far as the reinstatement of the workman is concerned it would not be proper to order for reinstatement particularly when the workman worked only for about one year, the workman is entitled to lump sum compensation in lieu of reinstatement.

17. Taking into consideration the facts and circumstances of the case, the end of the justice would meet by awarding compensation of Rs. 25,000/-. In view of the above peculiar facts and circumstances the workman is also entitled for Rs, 5,000 as litigation costs. The management is directed to pay total sum of Rs. 30,000/- to the workman within one month from the date of publication of the award.

18. In view of the above, the reference is answered accordingly. Central Govt. be informed. A soft copy as well as hard copy be sent to the Central Govt. for publication of the award.

Chandigarh : 11.02.2014

S.P. SINGH, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 935.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ़ पोस्ट ऑफिसर्स एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए-497/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/2/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/54/2002-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 935.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGITA-497/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Supreintendent of Post Offices and others and their workman, which was received by the Central Government on 24/2/2014.

[No. L-40012/54/2002-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT: Binay Kumar Sinha,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad, Dated 4th February, 2014

Reference: (CGITA) No.-497/2004

Reference (I.T.C.) No. 47/2002 (old)

Order No. L-40012/54/2002-IR(DU)

1. The Suprientendent of Post Offices,
   Gandhinagar Division, Sector-30
   Gandhinagar

2. The Chief Post Master General,
   Gujarat Circle, Khanpur,
   Ahmedabad (Gujarat)-380001 ....First party

   And

   Their Worman
   Sh, Natwarbhai Velabhai Rathod
   Through the organising Secretary,
   The Association of Railway and Post Employees,
   15 Shashi Apartments,
   Near Anjalee Cinema, Vasna Road,
   Ahmedabad (Gujarat) 380007 ....Second Party

For the first party: Shri Pravinchandra M. Rami,

Asst. Govt. Pleader & Advocate

(Labour & Industrial Court)

For the second party: None

AWARD

The Government of India/Ministry of Labour, New Delhi by its Order No. L-40012/54/2002 IR (DU) dated 18.6.2002 under clause (d) of sub section (1) and sub section 2(A) of Section 10 of the Industrial Disputes Act, 1947 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad Gujarat on the terms of reference specified in the Schedule:

SCHEDULE

"Whether the action of the Department of Posts through its officer in termination the service of Sh. Natwarbhai Velabhai Rathod, Branch Post Master without compensation is legal, proper and justified? If not, to what relief the concerned workman is entitled?"

2. Parties appeared in the case and filed respective pleadings as per statement of claim (Ext.10) of the 2nd party that the concerned wormman was serving a branch postmaster at Sitapur and he worked from 08.11.2000 to 09.05.2000/- continuously, but all of a sudden his serving notice and without assigning any reason, After his termination the work of post master was given to new person. The 1st party has conveyed the mandatory provision of section 25F and 25H and Rules 77 of the I.D. Act which is illegal and so relief sought for his reinstatement with full back wages and consequential benefits.

3. The 1st parties in its written statement (Ext. 12) contended that the reference is not maintainable since the workman Shri Rathod was kept on purely temporary basis as stop gap p arrangement and that the concerned workman worked on for 184 days from 08.11.2000 to 10.05.2001 and so the 1st parties have not entitled for reinstatement with back wages etc. and the reference is fit to be dismissed.

4. The dates are being adjourned for leading evidence by the workman (2nd party) but 2nd party remained absent whereas the lawyer of the 1st party by filing pursis Ext. 18,19 and 20 on different dates was ready for cross of 2nd party workman.

The 2nd party workman and his Union appear to have lost interest in this reference. So the reference deserves to be dismissed. The following order is passed.

ORDER

The action of the 1st party is terminating the services of Natwarbhai V. Rathod is justified. The workman is not entitled to relief.

This reference is dismissed for non-prosecution.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 936.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2 धनबाद के पंचाट (संदर्भ संख्या 24/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/419/2000-आई आर (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, which was received by the Central Government on 24/02/2014.

[No. L-20012/419/2000-IR(C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT: SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 24 OF 2001.

PARTIES : The Working President,
Rastriya Colliery Mazdoor Sangh
Rajendra path, Dhanbad
Vs. General Manager,
Central Workshops of Kustore Area
of M/s. BCCL Kustore, Dhanbad

APPEARANCES:

On behalf of the workman/ Union	Mr. K. Chakraborty, Ld. Advocate
On behalf of the : Management	None, Ld. Advocate
State:	JHARKHAND
Industry:	Coal

Dated, Dhanbad, the 9th Jan. 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/419/2000(C-I) dt. 25.01.2001.

SCHEDULE

"Whether the demand of the Union for promoting Shri Bishambhar Singh, Armature Winder Gr. I of Central Workshop of Kustore Area of M/s. BCCL, Distt. Dhanbad to the post of Asstt. Foreman J & S Gr. "C" with effect from the date his juniors have been promoted as Asstt. Foreman is justified? If so, to what relief is the said workman entitled.".

2. Neither the Union Representative for Rastriya Colliery Mazdoor Sangh nor workman Bishambhar Singh appeared nor any witness produced for the evidence of workman despite Regd., notices. Similarly none appeared for the Management.

On perusal of the case record, it stand clear from it that the case has been pending for the evidence of workman since 30.12.2005 for which Registered notices were issued to the union concerned on its address noted in the reference itself, though Mr. Gopal Tiwary, the Legal Assistant was present for the O.P./Management on the last date *i.e.* on 26.11.2013 on which date last chance was given to the Union Representative for the evidence of the workman. The present reference relates to an issue for the promotion of the workman to the post of Asstt. Foremen J & S for Grade C. The Union Representative as well as the workman by his conducts appears to be disint erested/unwilling in pursuing the case, as he has lost his interest in it. Therefore the case is closed as no Industrial dispute existent and accordingly an Award of No Dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 937.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2 धनबाद के पंचाट (संदर्भ संख्या 85/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/82/2012-आई आर (सीएम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 85/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad now as shown in the Annexure in

the Industrial Dispute between the management of M/s. BCCL and their workman, which was received by the Central Government on 24/02/2014.

[No. L-20012/82/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 85 OF 2012

PARTIES : The Vice President,
Janta Mazdoor Sangh, Vihar Building,
Jharia, Dhanbad.
Vs. General Manager,
Kusunda Area of M/s. BCCL Kusunda,
Dhanbad

APPEARANCES:

On behalf of the Workman/Union		Mr. K. N. Singh, Ld. Advocate
On behalf of the Management	:	Mr. U.N. Lal, Ld. Advocate
State	:	JHARKHAND
Industry	:	Coal

Dated, Dhanbad, the 3rd Jan. 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/82/2012-IR(CM-I) dt. 29.10.2012.

SCHEDULE

"Whether the action of the management of Kusunda Area of M/s. BCCL in not regularizing Sri Pramod Prasad as UG Munshi is legal and justified? To what relief is the workman concerned entitled?"

2. Neither any Representative for Janta Mazdoor Sangh, Jharia, Dhanbad, for the Union nor workman Promod Prasad appeared nor any written statement of the workman filed, Mr. U.N. Lal Learned Advocate for the O.P./ Management is also absent.

On perusal of the case record, I find that the present case has all along been pending for the Written Statement to be filed on behalf of the Union/workman, for which three Regd. Notices dt., 24th Dec., 2012, 31st July and 13th Nove., 2013 respectively have been issued to the Vice President of the Union concerned, but none of them responded to it. The Union Representative as well as the workman by his conduct appears to be uninterested in pursuing the case for its finality. Under these circumstances, it is useless to proceed with the case for uncertainity. Hence the case is closed as no Industrial dispute existent, and accordingly it is passed an Order of 'No Dispute'.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 01/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/88/2006-आई आर (सी एम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 938.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workman, received by the Central Government on 24/02/2014.

[No. L-20012/88/2006-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 01 OF 2007.

PARTIES: Shri Hari Prasad Saw, M/Labour
Bhowra (S) Colliery of M/s. BCCL,
Dhanbad
Vs.
General Manager, E.J. Area of
M/s. BCCL, Bhowra, Dhanbad.

APPEARANCES :

On behalf of the workman	:	Mr. M.N. Rewani, Ld. Advocate
On behalf of the Management	:	Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, Dated the 4th Nov., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/88/06-IR (CM-I) dt. 24.1.2007.

SCHEDULE

"Whether the action of the management of Bhowra (S) Colliery of M/s. BCCL in dismissing? Shri Hari Prasad Saw, M/Loader from Service of w.e.f. 12.2.2004 is justified & legal? If not, to what relief is the concerned workman entitled?"."

2. The case of workman Hari Prasad Saw is that he was a permanent employee of Bhowra (S) Colliery of M/s. BCCL working as M/Loader. He was issued the charge sheet by the Management on 24.10.2003 for misconduct of habitual unauthorized absentism from 27.06.2003 under clause 26.1.1. of the Certified Standing Order of M/s. BCCL.Whereas he had absented from duty, as he was abducted by his father-in-law for a dispute/ enmity with him. His mother had informed the management of it through the Regd.Post on 20.11. from his village Gararia, P.O.Raniganj, Distt:Gaya, Bihar. The charge sheet was issued with a direction to him to submit his reply within seven days. But without waiting for his reply, he was communicated as per the Office Order on 27.10.2003 for holding a domestic enquiry. It was totally illegal and violative of natural law. He had replied to the chargesheet by stating his inability to attend to his duty on account of his enmity with his father-in-law. In spite of it, the notice was issued on 6.1.004 for conducting a domestic enquiry into the chargesheet. Even at his full justification for his absence due to the said reason in the enquiry, he was not sympathetically allowed to join his duty. The enquiry report of the Enquiry Officer without a date falsifies the enquiry process. The workman also instantly replied to the letter dt. 19.1.2004 of the Management on the same date; even then the Management without hearing and considering his prayer recommended to dismiss him with immediate effect from 12.02.2004.The appeal preferred by the workman against it before the Management for his re-instatement has been still pending.

3. The workman in his rejoinder categorically denying the allegations of the Management has stated that his absence was quite reasonable, and the clause 26.1.1 of the Certified Standing Order applies only to the habitual absence but without any reasonable cause. Just after three days of the chargesheet, he was informed on 27.1.2003 about the setting up of the domestic enquiry, which was conducted without sufficient opportunity to him. The copy of the chargesheet was not supplied to him, but to his mother, through Regd Post at his native village, so his mother had replied to it. The entire enquiry proceeding is illegal, as it bears the workman to have put his signature whereas he is an uneducated person.

4. Whereas the contra pleaded case of the O.P,./ Management with its categorical denials is that workman Hari Prasad Saw, Ex-Miner Loader (P.No.03003050) of Bhowra (S) Colliery was unauthorisedly absenting w.e.f. 27.06.2003,so he was issued the chargesheet dt.24.10.2003 for his misconduct of habitual absentee as per clause 26.1.1. of the Certified Standing Order of the Company, directing him to file written reply to it in seven days. His mother replied to it that she was unaware of his whereabout. Consequently, the management as per the letter No.1544 dt.4.12.2002 appointed the Enquiry Officer and the Management Representative to enquire into the matter. At the notices of the Enquiry, the workman fully participated and availed ample chances for his defense in the enquiry. He had subsequently submitted his reply to the Second Show Cause, it was found unsatisfactory. In the enquiry, the past attendances of the workman were 75, 17,41 and 28 days in the years 2000 to 2003 (Upto June,26,2003) respectively as also brought out in the enquiry, so in the last year one SPRA of the workman as per the Order dt.01.03.2003 was stopped. Consequently the Disciplinary Authority imposed upon the workman the penalty of his dismissal for it as per the letter No.178 dt.12.2.2004 subject to the approval of the General Manager on 6.2.2004. Thererafter, the I.D. came into existence.

5. Irrespective of repetitions, the O.P./Management categorically responded negatively and postively,and sought a permission to adduce its evidence before the Tribunal in case of finding the enquiry as improper.

FINDING WITH REASONS

6. In the instant case, at the acceptance of the domestic enquiry as fair and proper by Mr. M.N.Rawani,the Learned Advocate for the workman, the Tribunal as per its order No.24 dt.31.7.2012 has accordingly held it to be in accordance with the principle of natural justice. In result, the documents of the O.P./Management were duly marked (on formal proof waived). Hence, it has directly come up for hearing at the final argument on merits.

Mr.M.N.Rewani ,Learned Counsel for the workman has submitted that the workman is a permanent employee as a Miner Loader of the Bhowra Colliery of M/s. BCCL, and the workman has been indisputably awarded with the harsh punishment of dismissal for his unauthorized absentism,which is fourth time, following two penalties of warning and third one of SPRA stoppage on his apologies for his previous absentisms in the year 2000 to 2003 (Upto

28th June, 2003). Further it is submitted on behalf of the workman that he had though justified his present absentism from his duty on account of the threatful incidents of his father-in-law. On the other hand, Mr. U. N. Lal, Learned Advocate for the O.P./ Management has to contend that the workman is an acknowledged habitual absentee as also as per his previous record of his services, the punishment of dismissal to the workman for gross misconduct is quite proportionate to the gross nature of his absentism.

7. On the perusal and consideration of the materials on the case record, I find that the workman is undoubtedly a habitual absentee from the job of Minor Loader just as in the present case of gross unauthorized absentism. Therefore, the punishment of dismissal to the workman for his gross absentisms from duty in violation of clause 26.1.1. of the Certified Standing Order of the Company seems not disproportionate to the nature of his usual absentism. Dismissal of an employee habitually absenting is justified as held in the case of P.M.Raju Vs. the Presiding Officer, Labour Court, Madurai & Management of Fenner (India) Ltd.(2001)4 LLN903;(2002)IV LLJ (Supp) 1119. Hence the workman appears to be wide off any relief under the provisions of Sec.11 A of the Industrial Ttribunal,1947.

In the result, it is responded and hereby

ORDERED

That the action of the Management of Bhowra (S) Colliery of M/s. BCCL in dismissing Sri Hari Prasad Saw, M/Loader from service w.e.f. 12.2.2004 is justified and legal. The concerned workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 29/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/438/2001-आई आर (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2002) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 24/02/2014.

[No. L-20012/438/2001-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 29 OF 2002

PARTIES : Shri Hardev Mistry.
Ex-Turner, Sirca Colliery of M/s CCL,
PO: Argada, Hazarbagh
Vs the Project Officer,
Sirca Colliery of M/s CCL, PO: Argrada, Hazaribagh.

APPEARANCES:

On behalf of the workman/ Union :	Mr. D. Mukherjee, Ld. Advocate
On behalf of Management :	Mr. D.K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, Dated the 22nd January, 2014

AWARD

The Government of India, Ministry of Labour, in exercie of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/438/2001. IR (C-I) dt. 04.04.2002

SCHEDULE

"Whether the demand of Hardeo Mistry, workman of Sirka colliery of M/s C.C. Ltd. that his date of superannuation should be 5.12.2000 instead of termination of service w.e.f. 19.2.2000 on the basis of his date of birth 5.12.1940 is legal and justified? If so, to what relief is the concerned workman is entitled?"."

On receipt of the Order No. L-20012/438/2001.IR(C-I) dated 04.04.2002 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the reference Case No. 29 of 2002 was registered on 01.04.2002 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned directing them to appear in the Court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

Both the parties made their appearance through their respective Counsels and Union Representative and filed pleadings and documents. They also adduced oral evidence.

2. The case of workman Hardev Mistry as pleaded in his written statement is that he was a permanent workman at Sirka Colliery. While appointing him, his date of birth (DoB) was based on his School Leaving Certificate and his declaration. All the employees of coal Industries were served with their service excerpt for giving a last chance for rectification/correction/amendment of date of birth, date of appointment etc. It was agreed that the date of birth as recorded in the service excerpt should be treated as final, if no objection raised. However, in event of any objection, it was agreed for the reference the workman concerned to the Medical Board for determination of age and his age so determined by Medical Board would be final. Accordingly, the workman was also issued his service excerpt bearing his date of birth as 05.12.1940, according to which the date of his superannuation at 60 years of his age was 5.12.2000. But the Management illegally and arbitrarily terminated his service w.e.f. 19.2.2000. In spite of his representation against it to the Management, it turned out in effective. The R.C.M.S. Union raised an Industrial Dispute before the A.L.C. (C), Hazaribagh against it, and the management in its conciliation proceeding though agreed for his reinstatement with full wages and benefits for the period Feb. 19 to Dec. 5, 2000. The dispute on that assurance was closed. But the Management took no cognizance of it. So the workman being disgusted with it reagitated the matter before the Concilliation Officer, but the Conciliation due to the restive attitude of the Management also failed. Though the Central Government had rejected the dispute for reference; but as per the order dt. 11.2.2000 of the Hon'ble High Court, Jharkhand, passed in W.P.(s) No. 1085/2002, the government referred it for an adjudication. Thus the action of the Management in terminating the service of workman w.e.f. 19.5.2000 instead of 5.12.2000 was illegal, arbitrary and against the principle of natural justice.

Specifically denying the allegations of the O.P./ Management as false, the workman in his alleged rejoinder under signature of his Lawyer concerned has stated that the workman was appointed prior to nationalization of CCL; the R.C.M.S. Union is a pocket Union of Management, as the dispute at the instance of the Management was withdrawn.

3. Whereas the pleaded case of the O.P./Management with categorical denials is that the reference is not maintainable, as he is not a workman as under section 2(S) of the Industrial dispute Act 1947 after his superannuation. Sri Hardeo Mistry son of Shri Kharag Mistry of Village Dakhin-Gaon, PO: Wazir Ganj, Distt: Gaya was appointed on 22.5.1958 at Kathara Colliery during erstwhile N.C.D.C. At his medical examination by the Asstt. Medical Officer In-charge of the colliery on 25.4.1969, his age was recorded by the aforesaid Doctor in his medical examination report as 32 years by appearance and 31 years of age as stated by the employee, who accepted it under his thumb Impression. His same age 32 years as on 25.4.1969 was recorded in his service sheet according to which his date of birth (DoB) came to 25.4.1937. Accordingly it was recorded in his service sheet as also authenticated by the Manager of colliery. The employee was transferred to Gorbi and Sirka Colliery as Mechanist/Turner Gr. I in the years 1973 and 1979 respectively. His date of birth remained unchanged up to 25.8.1981 which was satisfactory for about 12 years, but he never thought of any change in his date of birth as per Certificate of Matriculation on N.C.V.T., out of which the latter certificate he had got in the year 1978. But he committed a mischief to claim his date of birth as 05.12.1940 in his School Certificate he had not produced the School Certificate at the time of his Medical Examination or his appointment. It appears to have managed it later on after coming into the service of erstwhile N.C.D.C. He got his date of birth interpolated in his service book collusively, by striking his original date of birth, replacing it with his another one as 05.12.1940 based on his alleged Matriculation Certificate. When asked for it, the workman failed to produce any Matriculation Certificate till then. His such interpolation came to knowledge of the Area Management in Feb., 2000, and being satisfied with the original entry of his date of birth in his service sheet, the Management directed the Project Management to retire him with immediate effect. Besides, he worked for 42 years beyond the age of his retirement w.e.f. 19.2.2000, it can not be treated as his termination. So the retirement of the workman is legal and justified.

FINDING WITH REASONS

4. In this case, WWI Hardeo Mistry, the petitioner himself for the Union and MWI Sukumar Deoghria, the Dy. Manager (Pes.), Sirka Colliery, CCL for the O.P./ Management have been examined respectively.

According to the statement of petitioner Mahadeo Mistry (WW1) as per his written argument, while being appointed as Blacksmith in the year 1958, his age was recorded as 05.12.1940 in his Form-B Register as also recorded in his I.D. Card and Service Excerpt (Extt. W.1 & 2 respectively). Further the emphasis of the petitioner is that his passed ITI Certificate issued on July 1976 (Ext. W.3) as bears his same date of birth (DoB) as noted in the original School Leaving Certificate (Ext. W.4), according to which his superannuation comes on 05.12.2000, but instead of that the OP/Management unreasonably stopped him from working w.e.f. Feb., 2000, against which he had submitted his representation (Ext. W.5) to the Management. But from the admission of the petitioner, it is clear that his School Leaving Certificate was issued by the School Authority in the year 1968, and his I.D. Card bears not his date of birth. It prima facie proves that the petitioner had not submitted his alleged School Leaving Certificate (S.L.C.) for his non matriculate to the OP/Management at the time of his appointment as also asserted by MW1 Sukumar Deogharia.

5. Whereas the interalia contention of Mr. D.K. Verma, the Learned Counsel for the O.P./Management in the light of the statement of MW1 Sukumar Deogharia, Dy. Manager (Pers) of Sirka Colliery of CCL is that the petitioner has raised the reference after his retirement, so neither his superannuation nor his status as a workman comes under Sec.2 A and Sec. 2(5) of the Industrial Dispute Act 1947, hence it is unmaintainable. Further Mr. Verma, Learned Counsel has contended that the petitioner was firstly appointed as Turner in the NCDC (National Coal Development Corporation) on 22.5.58 and as per his Service Sheet (Ext. W.1) following his medical examination by the Asst. M.O. I/C as per his Medical Report (From dt. 25.4.69 Ext. M.2 with objection), his date of birth was recorded as 25.4.1937 or as 32 years as on 25.6.69, since the petitioner had completed his service for 41 years 9 months beyond 60 years since his appointment, so he was made to retire on 19.2.2000 from Sirka Colliery of CCL as per the Management's order dt. 19.2.2000 (Ext. M.3). Though petitioner/workman had never produced his School Certificate at the time of his entry into the service, he tried to make out his false date of birth claim based on his ITI Provision Certificate evidently contingent upon his alleged non-matriculation certificate as referred therein (Extt. W.3 and 4 respectively), on the basis of which, he managedly got the same interpolated in his Service Sheet (Ext. M.1). All these prove that the petitioner had not produced his any School Certificate at the time of his appointment as Turner, so his claim in the reference appears be untenable.

6. On persual and consideration of the materials on the case record, I find that the argument of Mr. D.K. Verma, Learned counsel for the O.P./Management appears to be not untenable, rather consistent with real factum of the case. As the nature of the case stands before me clearly reflects the claim of the employee to be based on his non-matriculate Certificate procured in the year 1968 after about a decade, which seems a concoction on his part. In such circumstance, I am of the view as also held by the Hon'ble Apex court in the case of G.M. Bharat Coking Coal Ltd. Vs. Shib Kumar Dushad, (2000) 8 SCC 696 that correction of date of birth by an employee long after his joining service will not be permissible.

In result, it is, in the terms of the reference, responded, and accordingly, hereby.

ORDERED

That the demand of Shri Hardeo Mistry, then employee, from the Management of Sirka Colliery of CCL whether his superannuation w.e.f. 19.2.2000 in place of 5.12.2000 on the basis of his alleged date of birth 5.12.1940 is quite unjustified as well as illegal. Hence the petitioner is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 24/ 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/177/1999-आई॰ आर॰ (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 940.—In pursuance of Section 17of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 24/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 24/02/2014.

[No. L-20012/177/1999-IR(C-I)]

M. K. SINGH, Section Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

NO. 24 OF 2013.

PARTIES : The Addl. Gen. Secretary,
National Coal Organization Employees Association, Ranchi
Vs. The General Manager,
C.W.S. Barkhakana of M/s. CCL,
Hazaribagh.

APPEARANCES:

On behalf of the workman/ Union	None
On behalf of the : Management	Mr. D.K. Verma, Ld.Advocate
State:	Jharkhand
Industry:	Coal

Dhanbad, Dated the 20th Jan., 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d)

of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/177/99-IR(C-I) dt. 18.08.1999.

SCHEDULE

"Whether the dismissal of S/Shri S.K. Palit, Niranjan Kumar, Mandip Ram and Sanjay Kumar from service by the Management of M/s. CCL, Barkakana is proper, justified and legal? If not, what relief the workmen are entitled to?"

2. Neither the Union Representative for the National Coal Organization Employees Association, Darbhanga House, Ranchi, nor any of the four workmen S.K. Palit, Niranjan Kumar, Mandeep Ram and Sanjay Kumar appeared nor on their behalf not any written statement with documents filed. But Mr. D.K. Verma, the Ld. Advocate for the O.P./Management is present.

On perusal of the case record, it is clear that since the Reference case has been registered, despite three Regd. Notices dt. 03.04.2013, 01.10.2013 and 27.11.2013 having been issued to the Addl. General Secretary of the Association on its address noted in the Reference itself, none appeared on any date nor W.S. with the documents filed on behalf of the workmen in this case which is related to an issue of their dismissal. The Union Representative as well as the workmen by their conducts appears to be uninterested in pursuing their case for finality. Under these circumstances, it would be quite proper to close the case as no Industrial Dispute existent. Accordingly an Award of No Disputer is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 223 का 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/236/2001-आई आर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 223/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 24/02/2014.

[No. L-20012/236/2001-IR(C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT: Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 223 OF 2001.

PARTIES : The Secretary,
Koyla Ispat Mazdoor Panchyat,
Katrasgarh, Dhanbad
Vs. Gen. Manager, Katras Area of
M/s. BCCL, Sijua, Dhanbad

APPEARANCES:

On behalf of the workmen/ Union:	Mr. B.B. Pandey Ld. Advocate
On behalf of the Management:	Mr. D.K. Verma, Ld. Advocate
State:	Jharkhand
Industry:	Coal

Dhanbad, dated the 20th Jan., 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/236/2001-IR(C-I) dated 10.08.2001

SCHEDULE

"Whether the action of the Management of Katras Area of M/s. B.C.C.L., P.O. Sijua, and Distt. Dhanbad in not providing employment to the 2nd wife of Late Munna Rajwar is justified? If not, to what relief is the dependent of the concerned workman entitled?"

2. The case of sponsoring Coal Ispat Mazdoor Panchyat, Katrasgarh, Dhanbad, for petitioner is that Late Munna Rajwar was the permanent employee of East Katras Colliery of M/s. BCCL under Katras Area, but he expired on 23.04.1992 during his service. On his death, his dependent wife Dharmshila Rajwarin submitted all the relevant Certificates/papers for the employment in place of her deceased husband under clause 9.5.0 of the N.C.W.A-V. She is second wife of Late Munna Rajwar, and entitled to all benefits. Accordingly the management has paid her all legal dues, CMPF Accumulation, Gratuity and amount under Life Cover Scheme arising due to death of her husband. On being fully satisfied with the claim as genuine after several queries from her, the management as per its

letter No. EK/PD/98/171 dt.1/17.2.1998 offered her options for accepting either monetary compensation or employment in place of her deceased husband under said clause of NCWA. Accordingly she chose for employment thereunder, by confirming it in writing on 18.02.1998. But the Management kept silent over it for about three years, during which the issue was discussed with the Management even before the ALC ©, Dhanbad. Lastly the Management as per its letter No. EK/PD/2000/3160 dt.13/14.11.2000 regretted her claim for employment. Though despite the approaches of the petitioner and the Union concerned for reconsideration as before the ALC ©, Dhanbad, the conciliation proceedig before the ALC©, failed resulting in the reference for an adjudication.

3. The petitioner in her rejoinder dt. 15.12.2003 under the signature of Mr. P.P. Pandey, Advocate for her has categorically denied the allegations of the O.P./ Management, and stated that Rukmini Kamin had expired on 17.02.1987, and the petitioner Dharmashila Rajwarin/ Dharam Shila Devi, though second wife of the deceased workman, was legally a married wife, as she got all the legal dues CMPF etc. of her deceased husband. The second wife has the status of legally married wife, so she is entitled to employment.

4. Whereas specifically denying the allegation of the petitioner, the O.P./Management challenging the maintainability of the reference has stated that the instant case does not indicate the name of second wife of deceased workman Munna Rajwar, who as a permanent employee of East Katras Colliery died in harness on 23.04.1992. The deceased workman had married Smt. Rukmani Kamin whose name appears as his nominee in his PF Records. But during the life of his aforesaid first wife, he had married Smt. Dharmsila Devi as second wife which was null and void under the law: the bigamous marriage is a punishable offence and also misconduct under the Certified Standing Order of the Company. So the petitioner second wife of the deceased workman has no status of a wife under the law. As per the provision of the NCWA, only the wife of the workman is entitled employment in case of his death in harness, but his second wife (petitioner) has no status of a wife under the law, so she can neither be called as his wife nor be entitled to any employment. Besides, the processing of papers for employment, and forwarding the same to the Company's H.Q and correspondences, if any, do not change the legal status of second wife of the deceased workman. So the action of the Management as stated in the Schedule to the reference is justified.

FINDING WITH REASONS

5. In the instant case, WW1 Dharmashila Rajwarin, the petitioner, on behalf of the Union, has been examined. Not any witness for the Management despite ample opportunity has been produced and examined. The statement of petitioner Dharmashila Rajwarin (WW1) reveals that Late Munna Rajwarin, the Extrammer at East Katras Colliery was her husband who died in harness on 23.04.1992. After his death, she as his widow had got all dues of her husband from the Management. Her positive assertion is that her husband had married her about four years (*i.e.* in the year 1988) before his death 23.04.1992 but after the death of his first wife Rukmini Kamin on 17.02.1987 as evident from their Death Certificates Extt. W./5 and 5/1 respectively. Consequent upon the death of her husband, the petitioner had submitted her representation to the Management on compassionate ground which was forwarded to the H.Q. at Koyla Bhawan. The Management as per its letter (dt.11/17.2.1998—Ext.W.1) asked her for compensation or employment. She responded to it as per her petition (dt. 17.02.1998—carbon copy —Ext.W.2), but the management as per its letter dt. 13/14.11.2000 with its enclosure dt. 1.11.2000 (Extt.W.3 and 3/1 respectively) rejected/regretted the fact of her employment, though the Project Officer is per his letter (dt. 26th July 1995—Ext.W.4) addressed to the Dy. Chief Personnel Officer over her claim for employment compassionate ground. Hence she raised the industrial dispute for her relief. She has flatly denied the fact of the O.P./Management in her cross examination that the ex-workman had married her during the life time of his first wife, as also denied the Death Certificate of her husband as manufactured. In the light of aforesaid facts, Mr. B.B. Pandey, Learned Counsel for the petitioner has arguably submitted for her employment on compassionate ground under clause 9.5.0 of the NCWA-V, and the case is not at all belated.

6. Whereas the contention of Mr. D.K. Verma, Learned Advocate for the O.P./Management is that the marriage of the petitioner as second wife having been soleminsed after the death of the first wife of the deceased workman has not been proved, the second wife is not eligible for her employment, and lastly that the present reference being belated is not considerable.

7. On the perusal and the consideration of the materials on the case record, I find that the O.P./ Management could not be able to rebut them payment of legal dues CPF etc. of the deceased workman to the petitioner even as his second wife. So far as the legal status of the petitioner as the second wife of the workman dying in harness after the death of his first wife Rukmini Kamin earlier is concerned, the petitioner has legal status accordingly after her marriage with the deceased workman just four years prior to his death in harness. The expression 'wife and husband' means a person claiming to be a wife or husband. The expression cannot be given a strict meaning as to convey only legally married wife and husband in reference to Sec. 14 of the Hindu Marriage Act (25 of 1955) as held in the case of Laxmibai *Vs.* Ayodhya Prasad, reported in AIR 1991 MP 47.

In view of the aforesaid discussed facts, I find the petitioner Dharmsila Rajwarin as the second wife of the late workman Munna Rajwar dying in harness has merits in her case. Hence in the terms of the reference, it is hereby.

ORDERED

That the action of the Management of Katras Area of M/s. BCCL, P.O. Sijua, Dist. Dhanbad in not providing employment to the second wife of Late Munna Rajwar is not only unjustified but also quite illegal. Therefore, the petitioner Dharmshila Rajwarin as the second wife of Late Munna Rajwar is entitled to her employment on compassionate ground under clause 9.5.0.(ii) of the N.C.W.A-V, if under 45 years of her age at the relevant time, otherwise she will be entitled only to monetary compensation.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 292 का 1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/178/1999-आई आर (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 292/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 24/02/2014.

[No. L-20012/178/1999-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT: SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

No. 292 OF 1999

PARTIES : The Secretary,
Bihar Janta Khan Mazdoor Sangh,
Sijua, Dhanbad
Vs.
The General Manager,
Katras Area of M/s. BCCL,
Sijua, Dhanbad

APPEARANCES:

On behalf of the Workman/ Union	None
On behalf of the Management	Mr. D.K. Verma, Ld.Advocate
State:	Jharkhand
Industry:	Coal

Dhanbad, Dated the 20th Jan., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/178/99/IR(C-I) dt. 04.08.1999.

SCHEDULE

"Whether the dismissal from service of Shri Chandadeo Yadav by the Ram Kanali Colliery of M/s. BCCL *w.e.f.* 20.07.92 is justified, legal and proper? If not, what relief the workman is entitled to?"

2. No Representative for Bihar Janta Khan Mazdoor Sangh, Sijua, Dhanbad, nor workman Chandra Dev Yadav appeared, but Mr. D.K. Verma, Ld. Counsel for the O.P./Management, Katras Area of M/s. BCCL present without any Management witness on preliminary point.

On perusal of the case record, it is quite clear that the case has been all along pending for the evidence of the Management at the preliminary point, meanwhile for its settlement it was also sent to Lok Adalat but it could not succeed. It is also evident that the Union representative or the workman by his conducts appears to be quite unwilling to pursue the case. Due to disinterestedness of the Union Representative as well as that of the workman and since the case is the oldest one of the year 1999. Under these circumstances, it would not be improper to close the case as No Industrial dispute existent. Accordingly an Award of No Dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के

प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 11 का 2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/162/2004-आई॰ आर॰ (सीएम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 943.—In pursuance of Section 17of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 24/02/2014.

[No. L-20012/162/2004-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT: SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 11 OF 2007.

PARTIES : The President,
United Coal Workers Union, Rajrapa, Hazaribagh
Vs. The Project Officer, Rajrappa Project of M/s. CCL, Rajrappa, Hazaribagh.

APPEARANCES:

On behalf of the workman/ Union	Mr. D. Mukherjee, Ld.Advocate
On behalf of the : Management	Mr. D.K. Verma, Ld. Advocate
State:	Jharkhand
Industry:	Coal

Dhanbad, Dated the 13th Jan., 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/162/2004/IR(CM-I) dt. 23.02.2007.

SCHEDULE

"Whether the demand of the United Coal Workers Union from the Management of Rajrapa Project of M/s. CC Ltd. to place Shri Rajeshwar Singh & 12 others (list enclosed), E.P. Turners & Mechanists Gr. I Group 'B'(daily rated) in monthly rated T & S Gr.'B' is legal and justified? If so, to what relief are the concerned workman entitled and from which date?"

2. None appeared for the Union United Coal Workers Union nor any of the workmen Rajeshwar Singh & 12 others nor any witness for the evidence on their behalf been produced despite last chance. Mr. D.K. Verma, the Ld.adv. for the O.P./Management is present.

From the perusal of the case record it is clear that the case has been pending for the evidence of the workman since 30th Jan. 2013 but not a single witness for the workmen even after giving the last chance has been produced on behalf of the Union. The Union Representative and the workmen by their conducts appear to be uninterested in pursuing the case for finality of the reference which is related to an issue for placement of the workmen in monthly-rated T& S Gr. B. Under these circumstances, the case is closed as No Industrial Dispute existent and accordingly an Award of 'No Dispute' is passed.

List of the workmen

1. Rajeshwar Singh, Turner Gr.I
2. B.K. Bhattacharje, Turner
3. D.P.Singh, Mechanist
4. Bhola Ram Prajapati Turner
5. Naresh Prasad, Turner
6. Maithu Matho, Turner
7. Anand Mahato, Turner
8. Y.P. Verman, Turner
9. Ratan Lal Mahato, Mechanist
10. Perma Nand Prasad, Mechanist
11. Hirdya Nand Singh, Mechanist
12. Muneshwar Mandal, Mechanist
13. R.K. Yadav, Mechanist

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 944.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक विवाद अधिकरण/श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ सं॰ 25/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/34/2002-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishs the Award Ref. 25/2002 of the Cent. Govt. Inus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 24/02/2014.

[No. L-12011/34/2002-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 21st October, 2013

PRESENT: SHRI S.N. NAVALGUND, Presiding Officer

C R No. 25/2002

I Party	**II Party**
The General Secretary, Vijaya Bank Workers Organisation, 37/1, I Floor, Car Street, Ulsoor, BANGALORE-560 008	The General Manager, Vijaya Bank, Head Office, 41/2, M G Road, BANGALORE-560 001

Appearances

I Party : Shri S Vittal Shetty Advocate

II : Shri Pradeep S. Sawkar, Advocate

AWARD

1. The Central Government vide order No. L-12011/34/2002-IR(B-II) dated 24.05.2002 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the management of Vijaya Bank is justified in terminating the disputants as per list attached from the services? If not, what relief these workers are entitled for"

2. After receipt of the reference on registering it in C R 25/2002 when notices were issued to both the sides they entered their appearances through their respective advocates and the General Secretary of the I Party Union filed his claim statement on 07.08.2002 claiming that though the workmen covered in the reference have worked as Temporary Sub-staff for more than 240 days in a year in different branches they having been terminated without compliance of the mandatory provisions of Section 25F of Industrial Dispute Act, they are entitle for reinstatement, whereas, Deputy General Manager of the II Party filed the counter statement on 07.06.2004 deny the said claim.

3. After completion of the pleadings when the matter was posted for the Evidence of the II Party management its learned advocate while examining 12 witness as MWs 1 to 12 got exhibited Ex-M-1 to Ex M-27 the detailed description of which are narrated in the annexure. After the evidence of II Party the I Party Union while filing Application reporting settlement relating to Sh. R V Raghunath, Sh. J H Palakamurthy, Sh. Narasimha, Smt. Kasthuri, Shri H. Satish along with their individual Memo of Reporting Settlement while restricting the claim only in respect of Sl. No. 2 Sh. Basavarajappa while filing his affidavit examining him as WW 1 got exhibited Ex-W-1 to ExW-17 the detailed description of which are narrated in the annexure.

4. After close of the evidence, the learned advocate appearing for the I Party filed his written arguments whereas the learned advocate appearing for the II party submitted his oral arguments. The following citations are referred to by the learned advocates appearing for I Party and II Party:

Citations on behalf of I Party

1. (2010) 2 SCC 543 - Ramesh Kumar vs. State of Haryana

2. (2010) 5 SCC 497 - Anoop Sharma vs. Executive Engineer, Public Health Div. No. 1, Panipat (Haryana)

Citations on behalf of II Party

1. 1999 I LLJ 1027 SC - Municipal Committee, Tauru vs. Harpal Singh and Another

2. AIR 2006 SC 1806 = 2006 SCC (Vol-4) 1 - Secretary, State of Karnataka vs. Umadevi

3. 1987 I LLJ 545 (SC) - Union of India & others vs. N Hargopal & others

4. 1997 FJR (Vol-90) 332 (SC) = AIR 1997 SC 1788 - State of Haryana & others vs. Jasmer Singh & others

5. 2002 (3) SCC 25 = JT 2002 (2) SC 238 - The Range Forest Officer vs. S T Hadimani

6. 2004 (Vol. 107) FJR 264 (SC) - Rajasthan State Mills vs. State of Rajasthan

7. AIR 2004 SC 4681 - Municipal Corporation, Faridabad vs. Siri Niwas

8. 2004 (8) SCC 426 2004 LAB I C 4041 (SC) - MP Electricity Board. vs. Hariram

9. AIR 1997 SC 3657 - Himanshu Kumar Vidyarthi & others vs. State of Bihar & others

10. JT 1996 (7) SC 678—Allahabad Bank vs. Shri Prem Singh

5. Since the claim in respect of five workmen reported as settled and only the claim in respect of workman at Sl. No. 2 namely Sh. Basavarajappa persued the points that arise for my consideration are

Point No. 1: Whether I Party Union proved that Sh. Basavarajappa worked for 240 days in a year at Akkipet and K G Road Branches of the II Party before he was allegedly terminated?

Point No. 2: If yes, to what relief he is entitle to?

6. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides in the light of the arguments put forward by both the learned advocates appearing for both the sides my finding on Point No. 1 is in the Negative and Point No. 2 as per final order for the following

REASONS

7. In view of the settlement in respect of the dispute relating to five workmen out of the 12 witnesses examined for the management the evidence of MW 5 and 11 and exhibits Ex M-14, 15 and 26 series which are relating to the claim of Sh. Basavarajappa regarding his claim of work at Akkipet and K G Road Branches of the II Party are relevant. Since it is the specific case made out in the claim statement filed by the General Secretary of the I Party Union that Sh. Basavarajappa worked in Akkipet Branch from 01.01.1996 to 31.12.1996 for 365 days; from 01.01.1997 to 21.08.1997 for 233 days; at K G Road Branch from 24.08.1998 to 23.08.1999 for 365 days; 24.08.1999 to 23.08.2000 for 365 days and from 24.08.2000 to 16.12.2000 for 115 days, the evidence tendered by the I Party he having also worked at K R Puram, Indiranagar, Residency Road, Rajajinagar, Jayanagar Branches of Bangalore being outside the pleading the same cannot be taken into consideration as urged by the learned advocate appearing for the II party. WW 1 in his cross-examination having categorically admitted that he was engaged at Akkipet Branch from January 1996 to December 1996 and from January 1997 to 21.08.1997 for a period of 233 days and he has been paid wages in that regard as per Ex M-15 crediting to his SB Account exract of which has been produced at Ex M-14 and at K R Puram Branch for 92 days between 28.12.1983 to 28.03.1984. His documentary evidence produced at Ex W-10 to Ex W-17 also do corroborate the said admission given by him. Thus, it is clear that in no academic year he has worked for 240 days continuously either at Akkipet Branch or K G Road Branch to fall under Section 25B of ID act. Therefore, the question of complying the mandatory provision of Section 25F in his case did not arise at all. In the result, I arrive at conclusion of answering the Point No. 1 in the Negative.

8. In view of my finding on Point No. 1 Sh. Basavarajappa workmen at Sl. No. 2 of the schedule is not entitle for any relief. In the result, I pass the following

ORDER

The reference relating to Sh. Sh. R V Raghunath, Sh. J H Palakamurthy, Sh. Narasimha, Smt. Kasthuri, Shri. H Satish is Rejected as Settled out of court and the reference relating to Sl. No. 2 i.e. Sh. Basavarajappa is Rejected on Merits holding that the management of Vijaya Bank is justified in terminating his services and that he is not entitle for any relief.

Dictated to U D C transcribed by him, corrected and signed by me on 21st (October 2013)

S.N. NAVALGUND, Presiding Officer

ANNEXURE-I

Witness examined on behalf of Management:

MW 1—Sh. K B Vijaya Kumar, Senior Branch Manager

MW 2—Sh. T. Nazeer Ahmed, Senior Branch Manager

MW 3—Sh. M H Narayanana, Assistant Branch Manager

MW 4—Sh. K Satish Shetty, Senior Branch Manager

MW 5—Sh. Guna Prakash Rao, Manager

MW 6—Sh. Gopala Krishna K, Senior Manager

MW 7—Smt. Subbalakshmi, Assistant Manager

MW 8—Sh. N Dinakara Shetty, Senior Branch Manager

MW 9—Sh. Sushyil Kumar Chand, Senior Branch Manager

MW 10—Sh. N Gunapal Shetty, Senior Branch Manager

MW 11—Sh. A Jaganatha Reddy, Assistant Branch Manager

MW 12—Sh. J G Fernandes, Assistant Branch Manager

Witnesses examined on behalf of Workman:

WW 1—Basavarajappa, Workman

Documents exhibited on behalf of the Management:

Ex M-1: Copy of letter engaging the I Party, Sri J H Palaksha Murthy, as Temporary Peon at R C Road Branch

Ex M-2: True copy of the attendance Sheets from February 1995 to November 1995

Ex M-3: True copy of the acquittance roll sheets and pay bill paid to Sri J H Palaksha Murthy

Ex M-4: Extract of Bi-partite Settlement with regard to temporary employees

Ex M-5: Copy of the Circular No. 30/93 dated 27.03.1993 of II Party

Ex M-6: Extract true copy of the Debit Vouchers for the period November 1999 to December 2000

Ex M-7: Extract true certified copy of the Acquittance roll of the I Party

Ex M-8: Extract True certified copy of the SB A/c No. 13670 of I Party

Ex M-9: Original letter engaging I Party Sri R V Raghunath, as Temporary Peon at Victoria Road Branch

Ex M-10: Original Ledger Sheets of SB A/c No. 1940 of I Party

Ex M-11: True copy of the acquittance roll sheets pertaining to Sri R V Raghunath

Ex M-12: True copy of the acquittance roll sheets pertaining to Sri D R Narasimha

Ex M-13: True ledger sheets of SB A/c No. 000217 of I Party

Ex M-14: True copy of ledger sheets of SB A/c No. 97206 to Sri Basavarajappa, KG Road Branch

Ex M-15: True copy of the acquittance roll sheets pertaining to Sri Basavarajappa

Ex M-16: True copy of the acquittance roll sheets pertaining to Sri B V Raghunath

Ex M-17: True copy of the ledger sheets of SB A/c No. 50034 of Sri R.V. Raghunath, Vanivilas Road Branch

Ex M-18: True copy of the acquittance roll sheets pertaining to Sri H Satish

Ex M-19: True copy of the ledger sheets of SB A/c No. 18461 of Sri H Satish, Audugodi Branch

Ex M-20: True copy of the ledger sheets of SB A/c No. 7 of Sri J H Palaksha Murthy, FTS Branch, Chickpet Branch

Ex M-21: True copy of acquittance roll sheets pertaining to Sri J H Palaksha Murthy, FTS Branch, Chickpet Branch

Ex M-22: Copy of letter engaging I Party Smt. K Kasturi as Temporary Peon at DAO Branch

Ex M-23: True copy of the ledger sheets of SB A/c No. 21246 of Smt. K Kasturi, DAO Branch

Ex M-24: True copy of the acquittance roll sheets pertaining to Smt. K Kasturi, DAO Branch

Ex M-25: True copy of the acquittance roll sheets pertaining to Sri H Satish, N R Road Branch

Ex M-26: True copy of the acquittance roll sheets pertaining to Sri Basavarajappa, Akkipet Branch

Ex M-27: True copy of the acquittance roll sheets pertaining to Sri H Satish, Ulsoor Branch

Documents exhibited on behalf of the I party

Ex M-1: Copy of letter dated 28.02.2001 adressed to ALC (C), Bangalore

Ex M-2: Original letter dated 20.04.1989 issued by the K R Puram, Bangalore

Ex M-3: Original letter dated 15.02.1995 issued by the Zonal Office, Bangalore

Ex M-4: Self attested copy of letter dated 15.04.1995, issued by the Zonal Office, Bangalore

Ex M-5: Original salary voucher for the month of May 1995 issued by K R Puram Branch

Ex M-6: Original letter dated 23.06.1995 issued by K R Puram Branch

Ex M-7: Self attested copy of letter dated 04.07.1995 of Indiranagar Branch

Ex M-8: Self attested copy of letter dated 30.03.1998 of Residency Road Branch

Ex M-9: Original Letter dated 27.12.1995 of Zonal Office, Bangalore

Ex M-10: Self attested SB A/c statement of Akkipet Branch from 09.07.1996 to 07.08.1997

Ex M-11: Copy of Bonus calculation sheet issued by Akkipet Branch

Ex M-12: Self attested copy of letter dated 09.08.1996 issued by Akkipet Branch

Ex M-13: Self Attested copy of letter dated 30.10.1996 issued by Akkipet Branch

Ex M-14: Self Attested copy of letter dated 21.08.1997 issued by Akkipet Branch

Ex M-15: Self Attested copy of letter dated 16.03.1998 issued by Akkipet Branch

Ex M-16: Original Certificate dated 02.11.2007 issued by K G Road, Bangalore

Ex M-17: Self Attested copy of letter dated 08.05.1999, K G Road Branch

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 945.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट, अर्केलोजिकल सर्वे ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय 1, दिल्ली के पंचाट (संदर्भ संख्या 188/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/69/2012-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 945.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 188/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Superintendent, Archaeological Survey of India and their workmen, which was received by the Central Government on 21/02/2014.

[No. L-42012/69/2012-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1, KARKARDOOMA COURTS COMPLEX, DELHI

ID. No.188/2012

Sh.Bhim Singh and Sh. Madan Lal through
The General Secretary,
All India CPWD (MRM) Karamchari
Sangathan (Regd.), 4823,
Balbir Nagar Extension,
Gali No.13, Shahadra,
Delhi-110032 ...Workman

Versus

The Superintendent,
Archaeological Survey of India,
Delhi Circle, Safdarjung Tomb,
New Delhi-110003.

…Management

AWARD

Archeological Survey of India (hereinafter referred to as the management) engages casual labour on need basis for removal of vegetation growth, maintenance, special repair environmental development work, conservation and preservation of historical monuments, archeological sites and remains of national importance Casual labours was engaged by the management belonging to trades like, beldars, coolies, bandhani, mistry, bhisti, stone cutter, mason etc., Wages of such casual labours are paid as per minimum wages, notified from time to time by the appropriate Government Shri Bhim Singh and Shri Madan Lal were engaged as casual labour by the management. Their services were availed for considerable long period. When they allegedly claimed enhancement of their wages, their services were dispensed with in February 2010. They raised a demand for reinstatement in service but to no avail. Resultantly, dispute was raised on their behalf before the Conciliation Officer. Since management contested their claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No. L-42012/69/2012-IR(DU), New Delhi dated 07.12.2012, with following terms:—

> "Whether the action of the management of Archeological Survey of India in terminating from employment the workmen, S/Shri Bhim Singh and Madan Lal with effect from 28.03.2010, is illegal and unjustified and if yes, what relief the said workmen are entitled to?"

2. Claim statement was filed by Shri Bhim Singh and Shri Madan Lal pleading therein that they were engaged by the management on muster roll with effect from 03.12.1994 and 22.08.2002 respectively. No appointment letter, wage slips or wage card etc. were issued in their favour. They have worked for more than 240 days in every calendar year Regular employees of their category are paid wages by the management according to regular scales of pay, while they are paid only minimum wages. Temporary status has not been granted to them. Though seniority list is being maintained by the management, yet the same has not been circulated to them. On 11.05.2009. directions were issued by the management to the effect that casual labours would be paid @ 1/30th of the pay at minimum of relevant pay scale plus dearness allowance for work of 8 hours a day. Pursuant to the said directions, they became entitled for payment of wages in consonance with regular scales of pay. When such a request was made by them, their services were dispensed with abruptly on 28.03.2010. No notice or

pay in lieu thereof and retrenchment compensation was paid to them. They requested the management to reinstate their service with continuity and full back wages but to no avail. They are entitled to reinstatement in service with continuity and full back wages, besides other consequential benefits, plead the claimants.

3. Claim was demurred by the management pleading that it is a scientific and technological institution set up by Government of India. It discharges duties of preservation and conservation of historical monuments, archeological sites and remains, declared to be of national importance under the Ancient Monuments and Archeological Sites and Remains Act 1958 and the Antiquities and Art Treasures Act, 1972. Functions performed by the management are sovereign functions, hence it is not an industry within the meaning of provisions contained in the Industrial Disputes Act, 1947 (in short the Act). The management protects 160 monuments situated all over Delhi with the help of its regular employees. For casual jobs of removing vegetation growth, conservation, preservation, maintenance, special repairs and environmental developmental work etc., it engages casual labours. Since sovereign functions are performed by the management, provisions of the Act would not come in to operation even for casual labour so engaged.

4. The management presents that Shri Bhim Singh and Shri Madan Lal were engaged as casual labours for temporary nature of cleaning work. It has been disputed that Shri Bhim Singh was engaged as casual labour since 1994. He was engaged for periodical work between October 2001 to December 2004. Shri Madan Lal was also engaged as a casual labour for sporadic nature of work for some specified duration. They had not completed 240 days of continuous service. Since as per their own claim, they were engaged on 03.12.1994 and 22.08.2002, hence they are not entitled for grant of temporary status, pursuant to scheme formulated in that regard on 10.09.1993. Seniority list for casual labours is being prepared and circulated from time to time. Since claimants were engaged for periodical work, their names were net included in the seniority list so circulated. Work assigned to them was of temporary nature, hence their services were disengaged on completion of specific item of work. Certificates, obtained by the claimants, were issued by officers not competent to issue such certificates Claimants have no case for reinstatement in service. Their claim may be dismissed, pleads the management.

5. On perusal of pleadings following issues were settled:

(1) Whether management is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether claimants have rendered continuous service of 240 days, in preceding 12 months, from the date of termination of their services?

(3) As in terms of reference.

6. Claimants have examined themselves in support of their claim Shri R.K. Jhingan entered the witness box to fend facts on behalf of the management. No other witness was examined by either of the parties.

7. Arguments were heard at the bar Shri Satish Kumar Sharma, authorized representative, advanced arguments on behalf of the claimants. Ms. Avtar Kaur Dhingra, authorized representative, presented facts on behalf of the management I have given my careful considerations to arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No. 1

8. At the outset, Ms. Dhingra argued that the management is not an industry within the meaning of clause 2(j) of the Act. She presents that the management is a department under the Ministry of Culture, Government of India, New Delhi. It is a scientific and technological institution established by the Government of India, *vide* notification No.A-36016/2/89/Estt. dated 27.10.1989. The management discharges duties of preservation and conservation of ancient and historical monuments, hence it is not an industry. Contentions advanced by Ms. Dhingra are repelled by Shri Sharma. He argued that the activities undertaken by the management fall within all four corners of the definition of industry, as enacted by section 2(j) of the Act.

9. When a claim is made by the management that it is not an industry within the meaning of clause (j) of section 2 of the Act, it becomes expedient to consider the term 'industry', Definition of term 'Industry', as enacted by section 2(j) of the Act, is extracted thus:

> "industry, means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

10. The definition of term "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the

definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities *viz.,* business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

11. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts, A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decisions have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry"' as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna lyer, which are extracted thus:

"1. "Industry" as defined in S.2(j) and explained in Banerjee (AIR 1953 S.C. 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss *i.e.* making, on a large scale prasad or foods) *prima facie,* there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector,

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1 (supra), although not trade or business, may still be 'industry' provided the nature of activity, *viz.* the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures, "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1 (supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if they are simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters and marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission, many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run

a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of, the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.675) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j)

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C 1080), Gymkhana (AIR 1968, S.C. 554) Delhi University (AIR 1963 S.C.1873), Dhanraj Giriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

12. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run. hence the management cannot be termed as an 'industry'. Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'.

13. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720], the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were "material services" to the textile industry hence the Association was held to fall within the ambit of definition of industry. But in Safdarjung Hospital case (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into 'industry' if other tests are not satisfied.

14. Ms. Dhingra argued that the management carries out sovereign functions hence it cannot be termed as an industry. Therefore, it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the

definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumberated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In Chief Conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

15. In Physical Research Laboratory [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can neither be called business, trade or manufacturing nor it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community, it is not rendering any services to others. It is engaged in pure research in space science.

16. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply and Sewerage Board (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

17. In the light of above propositions, facts of present controversy are to be scanned. As claimed by the management, it performs sovereign functions of preservation and conservation of ancient and historical monuments, archeological sites and remains declared to be of national importance under Ancient Monuments and Archeological Sites and Remains Act 1958 and the Antiquities and Art Treasures Act, 1972. As claimed by the management, in Delhi Circle there are 160 monuments spread all over the metropolis city, such as forts, mosques, tombs, pillars, hauzes, wells, walls, remains, rock inscriptions, cemeteries, temples, gardens etc. declared to be of national importance under the Ancient Monuments and Archeological Sites and Remains Act. 1958 and the Antiquities and Art Treasure Act. 1972. Aforesaid monuments are preserved and conserved by the management with the help of its regular employees. Besides its regular employees, the management also engages casual labours on need basis for removal of vegetation growth, conservation, preservation, maintenance, special repairs and environmental developmental work in respect of sites, referred above. Question which needs attention is as to whether functions of preservation and conservation of monuments of national importance can be termed as sovereign or regal functions. I am afraid that submissions made by Ms. Dhingra have any force. Functions, which are being carried on by the management are welfare activities undertaken to preserve historical monuments. In its welfare activities, State undertakes to preserve and conserve historical sites, and remains, to educate its subject in that regard Thai act would not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and

legislative powers of the State, On the otherhand, the management renders service to the community to satisfy their wishes to know about the history and historical monuments. Therefore, aforesaid activities cannot be described as regal or sovereign functions, since such activities could be carried out by private individuals or group of individuals.

18. Even in departments discharging sovereign functions, there may be units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j) of the Act. As projected by Ms. Dhingra, the management carries out functions of preservation and conservation of ancient and historical monuments, archeological sites and remains declared to be of national importance under the Ancient Monuments and Archeological Sites and Remains Act 1958 and the Antiquities and Art Treasures Act, 1972. Functions of preservation and conservation of ancient monuments cannot be termed as sovereign functions by any stretch of imagination. Even otherwise, the unit where casual labours are engaged by the management to carry out is substantially severable from other department of the management. It is further evident that there is hardly any activity performed by the management which a private entrepreneur cannot carry out. Resultantly, it emerges over the record that activities carried on by the management cannot be termed as regal.

19. The management carries out its functions with co-operation between it and its casual employees. Activities performed by the management are systematic one. It renders services to the community at large to satisfy human wants. Lack of business or profit motive or capital investment would not take out attributes of the management from the sweep of industry, if other conditions are satisfied. These facts make me to comment that triple test, referred above, stood satisfied and activities of the management fall within the ambit of industry, as defined under section 2(j) of the Act. Objections raised by the management is brushed aside on that count. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

20. In order to discharge onus resting on them, claimants namely, Shri Bhim Singh and Shri Madan Lal tendered their affidavits Ex.WW1/A and Ex. WW2/A respectively as evidence. In affidavit Ex. WW1/A, Shri Bhim Singh swears that he was engaged as safai karamchari at Old Fort on 03.12.1994. He was engaged by Shri Jhingan, Conservation Assistant, Archeological Survey of India. He worked under Shri Jhingan upto October 1998. Thereafter, he was orally transferred to museum at Old Fort where he worked under Ms. Sunita Tevatia. He worked under her till December 2000. He was again transferred by oral order to Humayun Tomb where he worked under Shri Jhingan upto December 2004 in January 2005, his services were taken at Jantar Mantar under Hari Singh Negi. He worked there till December 2005. In January 2006, his services were availed at Old Fort where he worked till 27.03.2010.

21. In affidavit Ex. WW2/A filed as evidence, Shri Madan Lal details that he was engaged by the management on 22.08.2002. He worked at Safdarjung Madrasa till 13.08.2003. From 14.08.2003 to 31.12.2003, his services were availed at Old Fort. Thereafter, he was made to work from 01.01.2004 to 31.08.2004 at Humayun Tomb, New Delhi. His services were availed at Old Fort from 01.09.2007 to 27.03.2010. His service was orally dispensed with on 28.03.2010.

22. Shri R.K. Jhingan deposed that Shri Bhim Singh had worked under him in the year 2004. According to him, Shri Bhim Singh worked for about 200 days in that year. Certificate Ex. WW1/1 was issued by him in favour of Shri Bhim Singh, wherein it has been mentioned that he had continuously worked under him for a period of three years. He feigned ignorance on the proposition as to whether Shri Bhim Singh was working with the management since 1994.

23. Question for consideration would be as to whether ocular facts, unfolded by the claimants in affidavit Ex. WW1/A and Ex. WW2/A would be sufficient to prove that they continuously worked with the management for a period of 240 days in a calendar year. In Range Forest Officer (2002 LLR 339), it has been ruled that the workman had to lead evidence to show that in fact he had worked for 240 days in the year preceding his termination. Mere filing of affidavit cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that the workman had, in fact, worked for 240 days in a year.

24. In Essen Deinki [2003 SC (L&S) 113], Apex Court ruled that in support of ocular facts, workman is under an obligation to produce some document to substantiate his claim of rendering continuous service of 240 days with his employer. Observations made by the Apex Court are extracted thus:

> "Completion of 240 days is to be in the year preceding termination of the workman to avail benefit under section 25F read with section 2B of the Act. Burden to prove that the workman has rendered service for 240 days in a year lies upon the workman when such claim is denied by the employer. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. It is for the claimant to lead evidence and show that he had in fact worked for 240 days in the year preceding his termination. Law, being well settled, and provisions of law are also very clear in that regard, question of interpretation of provisions of law in the manner

proposed by learned advocate for the respondent, does not arise at all. In that respect, it is immaterial whether the statute is beneficial legislation to the labour or not."

25. In R.M. Yelati [2006(1) SCC 106] same proposition of law was laid by the Apex Court. It was ruled therein that mere filing of affidavit or self serving statement made by the claimant will not suffice to discharge burden of proof of serving the employer for a period of 240 days in a given year. For sake of convenience, observations made by the Apex Court are extracted thus:

> "Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore-stated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

The above proposition was again reiterated in recent judgements in Shyamal Bhowmik [2006(1) SCC 337], Sham Lal [2006 VI AD (SC)1] and Gangaben Laljibhai and others [2006 VI AD (SC) 31].

26. In the light of law laid above, it would be taken note of as to whether Shri Bhim Singh and Shri Madan Lal had been able to discharge onus resting on them. Shri Bhim Singh places reliance on experience certificate issued by Shri R.K. Jhingan, which has been proved as Ex. WW1/1. Ex. WW1/1 brings to light that Shri Jhingan certifies that Shri Bhim Singh was working with the management as daily wager sweeper for the last three years, Ex. WW1/1 was issued by Shri Jhingan on 01.07.2004. When perused, contents of Ex. WWI/1 give reaffirmation to the facts unfolded by Shri Bhim Singh in his affidavit Ex. WW1/A.

27. Shri Madan Lal projects that he was engaged by the management for the first time on 22.08.2002. He initially worked at Safdarjung Tomb, thereafter at Old Fort, Hurnayun Tomb and was again transferred to Safdarjung Tomb. He lastly worked at Old Fort, from where his services were dispensed with. To have support, he places reliance on certificate Ex.WW2/1 issued by Shri J.M. Thapar wherein it has been certified that Shri Madan Lal was employed as a daily wager at Safdarjung Tomb, New Delhi. Ex. WW2/1 has been issued on 15.12.2006. He has also relied on letter Ex. WW2/4 on the strength of which his representation Ex. WW2/2 was sent by Deputy Director (Accounts), Archaeological Survey of India, New Delhi to Superintending Archeologist for submission of report in the matter. Ex. WW2/2 highlights that Shri Madan Lal as working with the management since long and his services were abruptly terminated on 28.03.2010. Authenticity and genuineness of Ex. WW2/2 and Ex. WW2/4 were not questioned by the management. Therefore, these documents give support to facts unfolded by Shri Madan Lal. Resultantly, it is crystal clear that ocular facts, detailed by Shri Madan Lal and Shri Bhim Singh get support from documentary evidence, referred above.

28. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.,* for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

29. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

30. Section 25F of The Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

31. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.l.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act, Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

32. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce/observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

33. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act, Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court

was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

34. The Tribunal is saddled with the responsibility to scrutinize facts adduced by the parties in order to ascertain as to whether the claimants have rendered continuous service of 240 days in any calendar year. As projected above, Shri Bhim Singh claims that he was serving the management since 03.12.1994 and rendered continuous service of 240 days in every calendar year, which fact is substantiated by certificate Ex.WWl/1. In the same manner, Shri Madan Lal claims to have rendered continuous service with the management since 22.08.2002. His continuous service with the management creep out of certificate Ex.WW2/1 issued by Shri J.M. Thapar on 15.12.2006. Furthermore, contents of Ex. WW2/2, which document has not been dispelled by the management, come to rescue of Shri Madan Lal. Therefore, for reckoning continuous service for a period of 240 days in preceding 12 months from the date when services of the claimants were dispensed with, the Tribunal had appreciated ocular facts detailed in affidavit Ex.WW1/A and Ex. WW2/A, coupled with the documents Ex.WWI/1, Ex.WW2/2 and Ex.WW2/4. On careful examination of ocular as well as documentary evidence brought over the record, it is concluded that the claimants could establish that they were in continuous service of the management for a period of 240 days in every calendar as contemplated by section 25B of the Act.

35. Period of service rendered by the claimants, as detailed above, nowhere includes Sundays and holidays. In a calendar year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, claimant could establish beyond doubt that they rendered continuous service for a period of 240 days in every calendar year, as contemplated by section 25-B of the Act. Resultantly, ft is concluded that the claimants had been able to project that they rendered continuous service of 240 days in every calendar year to avail benefits of provisions of section 25-F of the Act. The issue is, therefore answered in favour of the claimant and against the management.

Issue No. 3

36. It is not the case that the claimants reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that they were employed for a fixed term of contract and their services came to an end on non-renewal of contract of employment. It was not asserted that their services were terminated on the ground of their continued ill-health. Neither services of the claimants were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimants, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

37. The claimants had rendered continuous service for a period of one year in each year, as contemplated by section 25-B of the Act. According to them, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay them compensation for retrenchment, when their services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in Bombay Union of Journalists [1964 (1) LLU 351], Adaishwar Laal [1970 Lab.I.C.936] and B.M. Gupta [1979 (1) LLJ 168] announce that subsequent payment of compensation cannot validate an invalid order of retrenchment.

38. Claimants deposed that their services were terminated by the management 28.32010 without any notice. Out of facts unfolded by the claimants, it stood crystallized that neither notice nor pay in lieu thereof nor retrenchment compensation was paid to them by the management. Therefore, retrenchment of their service is violative of the provisions of section 25-F of the Act. The management had failed to project that the case of the claimants is an exception to the general rule. No evidence was brought over the record that service of the claimants were engaged dehors the rules. It is not the case that the names of the claimants were not sponsored by the employment exchange when they were initially engaged by the management. In such a situation, this Tribunal cannot reach a conclusion to the effect that case of the claimants is an exception to the general rule and relief of reinstatement in service may not be awarded to them. I am of the considered opinion

that the claimants could bring it over the record that they are entitled to relief of reinstatement in service with continuity.

39. No evidence was brought over the record by the claimants to establish that they made efforts but could not secure a job. There is complete vacuum of evidence to the effect as to whether claimants remained gainfully employed in the intervening period Absence of evidence on the issue of gainful employment make me to comment that the claimants could not show a case of award of back wages for the intervening period. Resultantly, it is ordered that the claimants are entitled to reinstatement in service with continuity and all consequential benefits, except the back wages. An award is, accordingly, passed in favour of the claimants and against the management. It be sent to the appropriate Government for publication.

Dated : 03.02.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन इंस्टिट्यूट ऑफ पेट्रोलियम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 89/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/175/2011-आईआर (डीयू)]
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (I.D. No. 89/2012) of the Central Government Industrial Tribunal/Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Institute of Petroleum and their workman, which was received by the Central Government on 21.02.2014.

[No. L-42011/175/2011-IR (DU)]

P.K. VENUGOPAL, Section Officer.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

ID No. 89/2012

Sh. Hitler Singh Bisht,

Versus

Indian Institute of Petroleum

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-42011/175/2011-IR(DU): dated 17.02.2012 referred the following Industrial Dispute to this tribunal for the adjudication:—

> "Whether the action of management of Indian Institute of Petroleum in terminating the services of Sh. Hitler Singh Bisht, helper w.e.f. 30.11.1995 without complying with the 25F of Industrial Dispute Act, 1947 is legal and justified? What relief the workman is entitled to?"

On 13.3.2012 reference was received in this tribunal. Which was register as I.D. No. 89/12 and claimant was called upon to file claim statement with the fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 11.5.2012.

Against contents of claim statement management filed Written Statement on 22.01.13.

Against contents of Written Statement workman filed Rejoinder on 21.5.2013.

My Ld. predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:—

> "Whether the action of management of Indian Institute of Petroleum in terminating the services of Sh. Hitler Singh Bisht, helper w.e.f. 30.11.1995 without complying with the 25F of Industrial Dispute Act, 1947 is legal and justified? What relief the workman is entitled to?

Workman on 12/11/2013 appeared and stated as follows in his examination-in-chief.

That the workman Sh. Hitler Singh stated that he want to withdraw his case with permission to file a fresh case at CAT.

Thus there remains no dispute to be adjudicated by this tribunal. Which has been referred for adjudication by Labour Ministry through its notification No. L-42011/175/2011-IR (DU), dated 17.02.2012.

Moreover this tribunal is not empowered to permit claimant/workman to withdraw his dispute.

In these circumstances it is a fit case for passing no dispute Award. Which is accordingly passed.

Dated: 13.02.2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2014

का॰आ॰ 947.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंस्टिट्यूट ऑफ़ फैशन टैक्नोलॉजी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, दिल्ली के पंचाट (संदर्भ संख्या 68/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/43/2000-आई आर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th February, 2014

S.O. 947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 68/2000) of the Central Government Industrial Tribunal/Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Institute of Fashion Technology and their workmen, which was received by the Central Government on 21/02/2014.

[No. L-42012/43/2000-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,

Present : Shri Harbansh Kumar Saxena

ID No. 68/2000

Shri Sanjay Kumar & Ors.

Versus

National Institute of fashion Technology (NIFT).

AWARD

The Central Government in the Ministry of Labour *vide* notification No L-42012/43/2000-IR (DU) dated 21.6.2000 referred the following industrial Dispute to this tribunal for the adjudication:—

> "Whether the termination of service of S/Sh. Sanjay Kumar, Sundeep Kumar, Manoj Kumar Rana, Satish Kumar, Benjamin Tigga by the management of NIFT, Ministry of Textile is legal and justified? If not, to what relief the workmen are entitled and from what date?"

On 1/8/2000 reference was received in this tribunal. Which was register as I.D No. 68/2000 and claimant were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants Shri Sanjay Kumar, Satish Kumar, and Benjamin Tigga filed claim statement on 7.8.2003 in this tribunal- Wherein grounds were taken as follows:—

1. That the deponent-workman was an employee of the management since 20.7.1996 as attendant of daily wages. It is submitted that at the time of initial employment, the recruitment procedure were complied with by interviewing the workmen, after having satisfied with eligibility criteria such as Qualification and age and was appointed. The workman marked his attendance daily. The workman has put in continuous service of more than 240 days right from 20.7.1996. In fact the service was continuous till the date of illegal termination on 31.7.1999.

2. That the Management of NIFT is under the control of Ministry of Textile Govt. of India and its director general is the Chief and Principal officer of the Management, who is having the control on Management.

3. That the workman performed the duty with hard labour and diligently and never given any chance of complaint in the Management nor there/was any complaint against any of the workmen regarding his work and duties.

4. That in colorful exercise of powers, the Management continued to issue the extension letters for their services rather to regularize their services even after the completion of 240 days of the regular services of the workmen and upto 3 year. The services of the workmen were continuous till the date of illegal termination on 31.07.1999. Like other workmen numbering about 71 who are still continuing in the services of the Management, the services of the workmen were extended from time to time. The action of the Management in continuing the workmen and other as temporary Attendant right from 1996 and not making them permanent is unfair labour practice. The very continuation of employment itself is a proof of existence of vacancies. Termination of services of the workmen herein and continuing with other similarly situated persons in the services would amount to unfair labour practice, discrimination and arbitrary exercise of power. The management being a "State" under Article 12 of the Constitution of India, its action is hit by Article 14 and 16 of the Constitution.

5. That under the guise of Management policy and under the colorful exercise of powers, the Management have illegally terminated the old services of the workmen *w.e.f.* 31.7.1999 without any prior notice of information rather to regularize their service. The action of the Management in terminating the services of the workmen herein was in gross violation of Sec., 25F of I.D. Act in so far as no notice, or notice pay or retrenchment Compensation was given to them at the time of termination.

Hence the termination of the workmen *w.e.f* 31.7.1999 being retrenchment is void ab initio.

5A. That many workmen were seniors, as is evident from the list of Regular & Daily wages attendant as on 15.1,1999 of the management. The names appearing at Serial No. 35 to 71 are juniors to the workmen, as their names are appearing above serial Number 35 . Hence the principle of 'Last Come First Go' was not followed while terminating the services of the workmen. Therefore, the termination is illegal, invalid, unjustified and unfair labour practice and is in gross violation of Sec. 25F of I.D. Act, 1947.

5B. That in the third week of July 1999, the management pressurized and threatened to terminate the services of the workmen, if they do not accept to work on contract basis. The workmen objected to the pressure and threat held out to them and did not accept to become a contract employee. Therefore by way of victimization and vindictive attitude, the management executed its threat by illegally terminating the services of the workmen. Therefore, the termination on 31.7.1999 is illegal and invalid being the result of victimization and vindication attitude.

5C. That the Management put pressure and held out threat to terminate the services of the workmen, if they did not accept the employment on contract basis. The Management issued letter of termination dated 26.7.1999 terminating the services *w.e.f* 31.7.1999 at the close of the working hours. It is submitted that there was requirement of workmen, as three workmen were otherwise entitled to continue till 31.12.1999, as per extension order dated 7.7.1999. Instead of regularizing the services of the workmen after prolonged continuous services and paying them the regular pay scales, changing the condition of services as contract employee is without notice under Sec. 9-A of I.D. Act, 1947 is illegal and invalid, and also would amount to unfair labour practice. The Management did not give any Notice under Section 9-A of the I.D. Act, 1947, Termination of services in these circumstances is illegal. The workmen filed a Civil Suit on 29.7.99 for declaration, permanent and Mandatory injunctions against the order of termination. Since the Management took objection as to the maintainability of efficacious alternate remedy under I.D Act, 1947, the workmen withdrew the suit on 27.3.2001 on legal advice. Immediately thereafter raised industrial dispute against termination of their services.

5D. That the scale of pay of attendant as of June 1999 was 2550-55-2660-60-3200. As against the proper pay-scale, the workmen were paid only Rs. 82-30 per day and the wages were paid every month. There was no paid weekly holidays. No wages was paid for Sundays and other holidays. No bonus was paid. No leave facilities was extended. However, Provident fund contribution were deducted @ of 10% initially and thereafter @ 12% later on and the wages paid to the workmen."

5E. That the management regularized several similarly situated workmen in the services, To say, the persons appearing in the list upto Serial No. 29 were regularised in the services before October, 1998 on the dates mentioned in the list. Hence workmen are also entitled to be regularized and are to be treated at par with them.

7. That in this way the management had illegally and with wrongful intentions adopted the unfair labour practice, victimization and pick and choose policy against the workmen. The management had also adopted the unfair labour practice as defined in the fifth schedule sub-clause 10 of the I.D, Act, 1947 which reads as under:

> "To employee workmen as 'Badlis' casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workmen".

8. That the above said action of the management are highly illegal, unjust, unfair, unconstitutional ultravirous, anti-labour, and against all the cannons of law. The management has no right to adopt the policy of victimization, discrimination and pick and choose policy in such as illegal manner against the workmen. All the workmen have illegally been victimized at the stage when they were entitled to become permanent employee.

9. That all the workmen are having the burdon of their families , who are on road in starving position since the management had illegally terminated them from their old services while the other counter parts/colleagues/ employees have been appointed on the permanent post of attendant.

10.That a notice of demand dated 27.9.1999 was duly sent to the management by Regd. Post, which was duly received by the management but the management deliberately did not pay any heed toward the same and were adamant on its illegal designs.

11.That thereafter, having no other efficacious remedy the workmen were compelled to file their case for reinstatement before the Conciliation Officer, Sh. Khushal Singh, A.L.C. (Central) on 26.10.99 where the case was heard for 7 or 8 times and the Ld. Conciliation Officer persuaded the management that it is a clear case of illegal termination and the management should reinstate the workmen on their old services but the management did not pay any heed towards the said advice of the Ld. Conciliation Officer in the colourful exercise of powers and to conceal their illegal acts, hence this claim.

12. That the Central Government, Ministry of Labour/ Shram Mantralaya, after considering the facts of the whole case and the illegal acts of the management, has referred

the present dispute to this Hon'ble Court by framing the following issue:—

"Whether the termination of service of S/Sh. Sanjay Kumar, Sundeep Kumar, Manoj Kumar Rana, Satish Kumar Benjamin Tigga by the management of NIFT, Ministry of Textile is legal and justified? If not, to what relief the workmen are entitled and from what date?".

13. That as per the facts and circumstances of the case the workmen has made out a clear case of illegal termination against the Management and they are entitled for reinstatement on the post of Attendant with effect from 1.8.1999 with full back wages and other arrears and allowances.

14. That all the workmen are unemployed since their illegal termination by the management.

It is, therefore, most respectfully prayed that an Award may pleased be passed in favour of the workmen and against the Management thereby directing the Management to reinstate the services of the workmen since their date of illegal termination *i.e.* 31.7.99 with full back wages and other arrears and allowances in the larger interest and equity.

In reply to claim statement management filed Written Statement on 13.10.03. Wherein it is submitted as follows:—

A. That the dispute raised by the workmen is a frivolous and vexatious dispute. The present dispute is barred since the workmen had already raised the said dispute by way of suit bearing No. 782/99 titled 'Sanjay Kumar & Ors. Vs. NIFT' which is presently pending in the court of Sr. Sub Judge, Tis Hazari, Delhi.

B. That the present court does not have the jurisdiction to deal with the present dispute since the claimants are not "workmen" as defined under section @ (s) of the Industrial Disputes Act, 1947. The National Institute and is not an "industry" as defined under section 2(j), Industrial Disputes Act, 1947 because it is a teaching institute and is not any business, trade, undertaking manufacture or calling of employees, NIFT is a fashion technology College which has been set up to impart specialized education in this field. As such, only teaching and consulting staff is employed alongwith certain Class IV officials to carry out the day to day work requirements.

C. That the present claim has been filed by the dissatisfied attendants. It is submitted that the order of the management dated July 26, 1999 has been passed pursuant to a policy decision taken by the management of the institute . The services of the workmen was not terminated but the conditions of service were sought to be changed in view of the fact that it was thought beneficial for both the attendant and the management of the institute to engage their services on contract basis.

D. It is submitted that the services of the said persons have not been illegally terminated. The said persons were employed on a daily wage basis and their employment was on a day to day basis. The said persons were given the terms and conditions of appointment in which it was clearly stipulated that the services of these persons was liable to be terminated without giving any reason by given a one month's notice. However, in an effort to give better conditions of service, all daily wagers were given the option of changing their basis of employment on contract basis, where the monthly remuneration worked out to be higher than the monthly wages of the workers. Without prejudice to the above, it is submitted that the Applicants were appointed on daily wage basis on the condition that their service could be terminated without assigning any reason. It was also stipulated that in the event one months notice period is not given, the pay in lieu thereof can be given. It is submitted that upon the July 26, 1999 notice being given to the Applicants, the Applications did not present themselves to be appointed on contract basis. They absented themselves from work, and have not exercised the option of taking the new more beneficial service terms. Further, all other persons falling in the same category are working on the new service conditions, and thus no right arises in the favour of the Applicants.

E. It is most humbly submitted that it is well settled proposition of law that on expiry of the contractual term an employee cannot claim to continue beyond the period of contract and /or regularized irrespective of the fact that they are given extension from time to time which is recently ratified by various courts in their decisions including the Supreme Court of India. The management craves leave of this Hon'ble Forum to refer to and rely upon the case law in this respect at the time of hearing.

F. These persons were not employed against any posts of permanent nature in as much as the work done by them differed depending upon the requirements of the Institute. It is submitted that employees against the said posts are already recruited, and there is no vacancy for any permanent employee in this category. It is further

submitted that the Institute is a National Design, Management and Technology College which is highly specialized in nature and thus the need of attendants is not very high. The institute is akin to College where mostly classes are held and no other kind of labour is required be done. Further, the job of attendants is extremely fluid and they are shifted from one department to another depending upon the need. The nature of the job is mostly temporary. The Institute is famous for holding national level Fashion Shows, Workshops, Seminars, etc. It is at such times that most of these attendants are required. Thus they are hired at times when their services are required on a daily wage basis. In order to maintain a check on the expenditure of the Institute, surplus attendants are not recruited.

G That however, at the time of recruiting the concerned persons it was made clear to them that their services were liable to be terminated at any time by giving them one month notice. The relevant term of the appointment of the said persons reads as follows:

"... Your appointment will be purely on a daily wage basis and can be terminated at any time by giving one month notice without signing any reasons either side...."

A copy of the appointment letters issued to the said persons is annexed hereto and marked as ANNEXURE-A (Colly).

These persons were thus provided their services on a day to day basis. They were paid on the basis of daily wages. As such the persons have no cause of action in the present case.

H. From the above it is clear that the action of the Management was not malafide. In fact, all other daily wages have been absolved on a contract basis *vide* orders dated 2.8.99, 3.8.99, 5.8.99, 9.8.99 and 11.8.99. Only the employees before this Hon'ble Forum were not appointed since they did not approach the institute and chose to first file a civil suit as slated earlier, which is still pending with Tis Hazari Courts and now approached this Hon'ble Forum. Copies of the appointment letters dated 2.8.99, 3.8.99, 5.8.99, 9.8.99 and 11.8.99. is annexed hereto and marked as ANNEXURE-B (COLLY):—

It is therefore respectfully submitted that the present claim raised by the employees should be dismissed outrightly the same is an abuse of the process of court because they have already approached the civil court for the same relief which is still pending and they should not be allowed to run parallel litigations one before the civil court and second before this Hon'ble Forum at the same time.

I. That the question for determination before this Hon'ble Tribunal is limited to the extent whether the services of the Persons were terminated illegally or not. It is not the case here that there are any permanent vacancies or there is any unfair trade practice or the persons ought to be regularised as alleged. The pleas raised by the Persons in respect of regularization, unfair labour practice etc. are not triable by this Hon'ble Tribunal. Therefore the plea of regularisation, unfair trade practice etc. raised are beyond the jurisdiction of this Hon'blc Tribunal.

J. That as per the settled proposition of law, in case of contract employee whose services were terminated after expiry of the contract period, there is no need to comply with condition of notice as per Section 25F of the Industrial Dispute Act, 1947. Therefore, there was no violation of Section 25 F of the Industrial Dispute Act, 1947 as alleged.

PARAWISE REPLY:

1-2 The contents of paras I and 2 of the statement of claim are not denied being matter of record. It is submitted that the appointment of the said employees was on purely daily wage basis which was made clear in the terms and conditions at the time of their appointment terminable without assigning any reason at one months notice or in lieu thereof.

It is respectfully submitted that initially the said employees were engaged on contract basis that therefore their status is of a contract employee. However, the contract was renewed for further period but as per the settled law, renewal of contract does not confer any vested right in favour of the persons and termination of their services after completion of the contract period is held to be valid and legal by the Apex Court as well a High Court in a catena of judgments.

3. The contents of para 3 of the statement of claim need no reply.

4. With reference to para 4 of the statement of claim, it is denied that the management continued to issue extension letter for the services of the concerned employee in colorful exercise of power. Since the nature of job of the said employees required to be done by them depended upon the need and requirement at a particular time, these persons were employed on contractual basis by the Institute on daily wage. Thus, there arises no question of regularizing the services of these persons arises in the present case. It is settled position in law that on expiry of contractual term of employee, the employee cannot claim to continue beyond the period of contract and/or

regularised irrespective of the fact that they are given extension from time to time which is recently ratified by various courts in their decisions including the Supreme Court of India.

It is respectfully submitted that there was no unfair labour practice on the part of the Management, as alleged or at all. It is submitted that there were no sanctioned posts and the persons were employed for seasonal work on contract basis. Therefore, continuation of the persons on contract basis would not create any right in favour of regularization or otherwise. As far as continuation of the other similarly placed employees is concerned, it is submitted that they are also working on contract basis and when the Persons were offered the same work on contract basis, for he reasons best known to them, they denied to accept the same which was also made clear by the Management during the conciliation proceedings pending before the Conciliation Officer. Therefore when the Persons, on their own will refused to work with the Management, it does not lie in their mouth to contend that allowing other similarly place persons to continued is unfair trade practice or violative of Article 14 and 16 of the Constitution, as alleged.

5. With reference to para 5, it is denied that the Institute illegally terminated the services of the concerned employees with effect from 31.7.99 without prior notice or information. Since the said employees were employed on a daily wage basis, their appointment was liable to be terminated at any time without assigning any reasons.

It is denied that there was any violation of Section 25F of the Industrial Disputes Act. It is respectfully submitted that as per the settled proposition of law, in case of contract employee whose services were terminated after expiry of the contract period, there is no need to comply with the condition of notice as per Section 25F of the Industrial Dispute Act, 1947. Therefore, there was no violation of Section 25F of the Industrial Dispute Act, 1947, as alleged.

5A. In reply to the contents of para 5A it is respectfully submitted that as the persons were employed on contract basis, their terms of conditions were governed by their respective contract and there was no provisions for keeping a seniority list for the persons engaged on contract basis. Therefore, there was no violation of the principles of "Last come first go".

5B-C That the contents of para 5 B and 5 C of the claim are wrong, incorrect and untenable. It is vehemently denied that the Management pressurized and threatened to terminate the Persons, if they do not accept to work on contract basis, as alleged or at all. On the contrary, the persons from their initial appointment were engaged on contract basis and here was no question of pressurizing them to work on contract basis and therefore, in view of the documents placed by the Management wherein it is apparent that the Persons were working on contract basis from their initial appointment, this submission of the Person is nothing but to mislead this Hon'ble Tribunal. As far as the regularization of the persons is concerned, it is reiterated at the sake of repetition that as per law working on contract basis for long period does not create a right for regularization. It is farther submitted that as per the terms of the appointment letter, the said employees were governed by their respective contract of employment and thus termination of the persons was in accordance with their contract and there was no violation of Section 9 A of the I.D. Act as alleged.

5D. In reply to the contents of para 5D of the claim, it is submitted that the persons were duly paid their dues as per their contract at the rate prescribed under the Minimum Wages Act. It is respectfully submitted that the Management is an autonomous body governing under the Ministry of Textile therefore, it has to follow all the law including Minimum Wages Act. Therefore, the wages paid to the persons were fixed as per law and there was no violative of any law at any point of time.

5E. In reply to the contents of para 5E of the claim, it is submitted that none of the similarly situated persons were regularised, as alleged, on the contrary, it is submitted that services have been hired on the basis of a short terms contract basis instead of daily wage basis. Since no permanent posts exist against which these persons can perform their duties, it cannot be said that the services of any of the similarly placed employees has been regularised.

6. With reference to para 6, it is denied that the persons were performing the duties of permanent nature and that various other similarly placed employees were regularised. As stated above in the preliminary submissions, none of the persons were performing duties of a permanent nature and more so no permanent posts exist in the Institute where they can be accommodated. Other employees have not been regularized and their services have been hired on the basis of a short term contract basis instead of daily wage basis. Since no permanent post exist against which these persons can perform their duties, it cannot be said that the services of any of the similarly placed employees has been regularised.

7-8 With reference to the contents of para 7 and 8 of the statement of claim, it is denied that the Institute has adopted unfair labour practice, victimization and has adopted pick and choose policy against persons. It is further denied that the Institute also adopted unfair labour practice as defined in the 5th Schedule, sub-clause (10) of the Industrial Disputes Act, 1947. It is reiterated that since no permanent posts exists against which these persons can perform their duties, it cannot be said that the service of any of the similarly placed employees has been

regularised/or the persons were entitled to become permanent employee as alleged or at all.

9. The contents of para 9 are not replied hereto since they are not relevant to the crux of the dispute herein.

10. That the contents of para 10 of the statement of claim are denied in as much as the Management did not willfully choose to ignore the said notice.

11. With reference to para 11 of the statement of claim, it is submitted that before approaching the Conciliation Officer, the persons in the present matter, filed a civil suit in Tis Hazari Court for mandatory injunction which is still pending, therefore the persons could not be allowed to say that they have not exhausted any alternate remedy they have. It is submitted that the claimants are availing two remedies at one time. On one side they have filed a civil suit which is still pending and on the other side they are taking recourse under the provisions of the Act which is totally wrong and incorrect and same amounts to abuse of the process of the court and concealment of facts from this Forum. The claim of the claimant should be rejected outrightly on this ground itself.

12. With reference to the contents of para 12 of the statement of claim, it is submitted that the reference of the present dispute is obtained by concealment of facts that they are already pursuing civil remedy before the civil courts and the same is still pending apart from the present dispute before this Hon'ble Forum. Therefore view of the fact that the matter is sub-judice, the present reference is not maintainable at all.

13. With reference to the contents of para 13 of the statement of claim, it is denied that the service of Applicants was terminated. Without admitting, but assuming that the services of the Applicants was terminated, it is submitted that the termination of the claimant is legal and on valid and cogent grounds. It is submitted that since the appointment of the persons was purely on daily wage basis, their appointment could not be extended beyond the period of the contract. Therefore, the present claim of the persons is liable to be rejected and no relief as prayed for be allowed to the workman in view of the factual as well as legal position discussed in the preliminary objections hereinabove.

14. That the contents of para 14 of the statement of claim are denied for want of knowledge and the persons are required for furnish strict proof thereof.

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that the present claim of the claimant be dismissed with heavy exemplary costs being void, illegal, malafide, vexatious being filed without any cogent and valid grounds for regularization of their contractual appointment which could be regularised beyond the period of contract as per law. It is prayed accordingly.

Workmen/claimants Shri Sanjay Kumar, Satish Kumar, and Benjamin Tigga in reply to aforesaid written statement filed rejoinder wherein they stated as follows:—

REPLY TO PRELIMINARY SUBMISSIONS :

A. That the contents of para No. A are wrong and denied. There is no bar as alleged in maintaining the present claim on behalf of the workmen. A civil suit for declaration filed by the workmen was withdrawn on 27.3.2001. Hence the allegations as made are misconceived.

B. That the contents of para No. B are wrong and denied being misconceived. The claimants are workmen as defined under section 2(s) of the I.D. Act and the management is an Industry as defined under Section 2(j) of the Act. Hence the allegations as made are wrong and denied.

C That the contents of para No. C are wrong and denied. The services of the workmen have been illegally terminated. The allege policy to terminate the services is illegal and invalid. There can be no policy in negation of the provisions of the Industrial Dispute Act. At no point of time the Management ever issued any notice in terms of the Section 9A of the I.D. Act. In any event in the given facts and circumstance the alleged change of service conditions is nothing but unfair labour practice. The Management committed unfair labour practice in retaining and absorbing the junior while terminating the services of the workmen. The alleged change of condition of service was unfair labour practice to perpetuate illegality and unfair labour practice so as to exploit the weak bargaining power of the workmen. Hence the allegations have no merit.

D. That the contents of para No. D are wrong and denied. The workmen had been employed continuously for longer period under the guise of daily wagers and thereby the management committed unfair labour practice though they were employed on permanent nature of jobs continuously. The absorption of the juniors to the workmen herein itself indicative of the fact that there were permanent vacancies in existence. The alleged change of terms and conditions were unfair labour practice. Perpetuating the practice of daily wagers/temporary employees is in negation of the object and scope of I.D. Act and would amount to unfair labour practice. The management in one form or another continued/or allowed to continue daily wagers/or on contract basis,/or on temporary basis against permanent requirement. This is nothing but unfair labour practice of the Management to exploit the working class. The Management wanted the workmen to sign on contract employment which was unfair and hence the workmen refuse to do so and insisted for regularization/absorption in the employment itself as permanent employees of the Management and sought scale of wages/other service benefits. The Management was so adamant and threatened to terminate the services if the contract employment for a

fixed sum was not accepted by the workmen. Hence the management committed unfair labour practice by victimizing the workmen for their act of not accepting the employment on contract basis. The threat of the management has become a reality by terminating the services of the workmen illegally *vide* letter dated 26.7.1999 *w.e.f.* 31.7.1999.

E. That the contents of para No. E are wrong and denied being misconceived. Continuing with employment on contract basis inspite of permanent requirement is itself an unfair labour practice and is in negation of the settled law. The management persisted and pursued the policy of contract employment so as to deny the various legal benefits available in law to the workmen. Perpetuating contractual employment as is being pursued by the management is to deny the deprive the workmen from the various service benefits available to them in law.

F. That the contents of para No. F are wrong and denied. The workmen were continuously working right from 1996 onwards though they were called daily wagers, against permanent requirements and vacancies. Continuous employment itself is indicative of existence of permanent requirements and vacancies. Instead of making the workmen as permanent employees and giving them various service benefits as available in law, asking them to accept employment on contract basis and thereby denying them the permanent status and ultimately terminating their services illegally for not towing to the pressures and threat held out by the management to the workmen, renders the action of management in terminating the services as void and illegal. The rest of the allegation are wrong and denied being misconceived.

G. That the contents of para No. G are wrong and denied. That management has committed unfair labour practice as stated in the claim and this Rejoinder. The allegations that the workmen were made clear and their services were liable to be terminated is wrong and denied, which is otherwise an unfair labour practice. In view of the weak bargaining power of the workmen, the management incorporated such a reasonable untenable clauses in the orders of appointments which is nothing but unfair labour practice.

H. That the contents of para No. H are wrong and denied except to the admission that many workmen have been absorbed on contract basis which is an unfair labour practice. Since the workmen were aggrieved by the action of the Management they resorted to the legal remedy by filing civil suit which was ultimately withdrawn as the civil suit was barred by the provisions of the I.D. Act as the workmen are governed by the I.D. Act. It is submitted that the present claim is legal, valid and is maintainable. Rest of the allegations are wrong and denied being misconceived.

I. That the contents of para No. I are wrong and denied. The very continuous employment itself is a proof of existence of permanent vacancies and still employing the workmen as daily wagers/contract basis is unfair labour practice. Rest of the allegations are wrong and denied being misconceived.

J. That the contents of para No. J are wrong and denied being misconceived. The very practice of continuing as daily wagers/or contractual employees for years together is unfair labour practice. Hence the actions of the Management are violative of the provisions of the ID Act. The termination of services of the workmen is also in violation of the Section 25F of the I. D. Act.

PARAWISE REJOINDER

1. to 2. That the contents of para 1 to 2 of the WS are wrong and denied. The contents of corresponding paras of the claim are reiterated and reaffirmed. The management committed unfair labour practice by keeping the workmen as daily wagers against permanent requirements and vacancies and thereby exploited them. The renewal of contract etc. as alleged in these para are unfair labour practice in the given facts and circumstances of the case. Hence the allegations are wrong and denied.

3. That the contents of para 3 of WS needs no reply as the corresponding para 3 of the claim are not disputed.

4. That the contents of para No. 4 are wrong and denied. The contents of para 4 of the claim are reiterated and reaffirmed. There was permanent and continuous requirements and with a view to deny permanency and other service benefits attached to permanent employment the Management perpetuated daily wage/contract employment system which is nothing but unfair labour practice. The actions of the management are also in negation of the settled principles to take a plea that there was no sanctioned post and heat the workmen were employed on seasonal work as alleged, as the employment was continuous. The Management forced the workmen to accept the unfair conditions and thereby wanted to continue the contract employment forever which was not acceptable to the workmen. As a consequence, the services of the workmen were terminated illegally and admittedly the management did not comply with section 25 F of the I.D Act. Admittedly the Management absorbed juniors to the workmen after termination of services. This too indicates the unfair labour practice of the management.

5. That the contents of para 5 of the WS are wrong and denied. The contents of para 5 of the claim are reiterated and reaffirmed. The workmen were illegally terminated in violation of Section 25 F of the I.D. Act. There was no notice or notice pay or retrenchment compensation given to the workmen. The practice of contract employment itself is illegal and is an unfair means to exploit the workmen.

5A to 5C That the contents of paras 5A to 5C of the WS are wrong and denied. The contents of paras 5A to 5C of the claim are reiterated and reaffirmed. The allegations

that the term of contract would govern the employment is misconceived. Perpetuating the contractual employment is itself unfair labour practice and in violation of the very object and scope of the I.D. Act. A right had accrued to the workmen for permanent employment in the Management as a result of continuous employment and in view of the unfair labour practice adopted by the management. Rest of the allegations are also wrong and denied.

5D. & 5E That the contents of para 5D and 5E of the WS are wrong and denied. The contents of para 5D and 5E of the claim are reiterated reaffirmed.

6 to 14 that the contents of paras 6 to 14 of the WS are wrong and denied. The contents of paras 6 to 14 of the claim are reiterated and reaffirmed. Continuous employment of workmen itself is a proof of permanent requirement and permanent vacancies in the Management. It was the management which adopted unfair labour practice by keeping the workmen and others as daily wagers/contract employees. The Civil Suit has already been withdrawn. The actions of the management in terminating the services of the workmen is illegal , invalid and in violation of the provisions of the I.D. Act.

It is prayed to the Hon'ble Tribunal that Award be passed holding that the workmen are entitled to reinstatement in service with full back wages and other service benefits.

On the basis of pleadings of parties following issues have been framed by my Ld. Predecessor on 9.9.2004:—

1. Whether this court has jurisdiction to entertain & try this case/reference? If so its effect? OPW.

2. Whether the contract between the workman/ claimant and management ? If any has expired? If so its effect? OPW

3.1n terms of reference ? OPW.

In support of their case workmen Shri Sanjay Kumar, Satish Kumar, and Benjamin Tigga filed their affidavit. They tendered their affidavit. Thereafter they were cross-examined by A/R for the management.

In support of its case management filed affidavit of MW1 Anil Kumar, His affidavit was tendered by management MW1 Anil Kumar was cross examined by Ld. A/R for the workmen.

Written arguments on behalf of the workmen. Wherein they stated as follows:—

1. That the workmen Sh. Sanjay Kumar, Satish Kumar and Benjamin Tigga have filed the present industrial dispute against the management of NIFT stating therein that they were appointed with the management as attendant *w.e.f.* 20.7.1996 after following a due recruitment procedure and continuously worked with the management for more than three years and their services were abruptly terminated by the management *vide* order dated 26.7.1999 *w.e.f.* 31.7.1999. It is further submitted that the workmen have put more than 240 days in every calendar year and they were seniors and the principles of last come first go was not followed and the juniors were retained however their services have been terminated because they refused to accept change in their service condition and work on contract basis.

2. That the management filed Written Statement and took some contradictory stands and submitted that the services were not terminated but were sought to be changed in view of the fact that it was thought beneficial for the claimants to work on contract basis (para C preliminary objection written statement). It was further submitted by the management that the action was taken to maintain a cheque on the expenditure of the institute and surplus attendants are not recruited (para F written Statement preliminary objection). However in para H, the management admitted that they have recruited the daily wagers after the termination of the claimants. The workmen examined themselves as WW-1, WW2 and WW3 and exhibited documents of their appointment and termination, legal notice. Nothing material could have come out of their cross examination.

3. That the management on the other hand examined one Sh. Anil Kumar as MW1, who was working as assistant director with the management. MW-1 in his cross examination admitted that he joined the management only in the year 2006 and prior to this he never worked with the management and hence it is absolutely clear that he had no personal knowledge of the case. He further admitted that the claimants worked with the management *w.e.f.* 20.7.1996 to 31.7.1999 continuously without any break and completed 240 days. He further admitted that the wages of all the workmen were paid on monthly basis. It was further admitted by MW-1 that no notice of retrenchment was served and no notice pay was given to the claimants nor any retrenchment compensation was offered and seniority list was also not prepared. It was further admitted by MW1 that no notice U/s 9-A of I.D. Act was issued to any of the workmen to change the service condition. From the testimony of MW-1, it is clear that the claimants have worked for more than 240 days and their services were terminated without assigning any reason and without giving any retrenchment compensation and notice pay or notice. No charge sheet or how cause notice was issued. The termination was without any notice U/s 9-A of I.D. Act.

4. In "Krishan Singh *V/s* Executive Engineer, Haryana State Agriculture Marketing Board, Rohtak 2010, LLR 450", the Hon'ble Supreme Court has held that where claimant has put more than 240 days of service and the termination of the services was without providing of retrenchment compensation and notice pay or pay in lieu of notice, the termination is illegal and the claimant is liable to be reinstated with back wages.

5. In "Haryana Roadways *V/s* Ramesh Kumar 2009, LLR 754", the Hon'ble Delhi High Court has held that if principle of first come last go is not followed and retrenchment compensation not paid, the termination of claimants is highly illegal.

6. In "Ratan Singh *V/s* Union of India LLJ 1998", supplementary, volume 3, the Hon'ble Supreme Court has held that if the claimant has worked continuously for more than 240 days in a calendar year, he is entitled to protection U/s 25-f and it cannot be denied nearly on the ground that he was a daily wager.

7. In "Suraj Pal *V/s* P.O.L.C No. 111", Delhi High Court 2002, LLJ, Part-III, it has been held that continuous service of 240 days does not mean immediately preceding date of retrenchment but it can be any year.

8.The summary of all these judgments is that if the claimant had worked more than 240 days in calendar year, he is entitled to protection U/s 25-f of I.D. Act and if the termination is without following the procedure laid down U/s 25-F, the same is violative and is illegal and the claimants are liable to be reinstatement with full back wages. The claimants have duly submitted in their evidence that they are unemployed and there is no evidence on record contrary to the said facts and there is no evidence of their gainful employment and hence they are liable to be reinstated with full back wages.

9. That the management has himself admitted that after the termination of the services of the claimants, they have appointed fresh workers on the same post clearly shows that the management required the services of the claimants. Since no seniority list was prepared, no compensation was offered or paid, the procedure as laid down in Section 25-F is violative. It is further not the case of the management that the engagement of the claimants was against statutory rules or the post was not sanctioned or there is no vacancy or the claimant is in gainful employment. Hence the termination is absolutely illegal.

10. That the management has tried to make a change in service conditions of the claimant by putting them on contract basis and as required U/s 9-a of I.D. Act, the same can be done only after a notice and in the present case admittedly no notice was served to the claimants. The management has also tried to put the claimant on contract basis, which was not at all acceptable to the claimant because the same is violative of various labour laws as the claimants have been working for more than three years. Moreover, the Hon'ble Supreme Court in "Bhilwara Dugdh Utpadak Sahkari S. Ltd. *V/s* Vinod Kumar Sharma" LLR 2011, Volume XLIT, 1079 has held that the appointment on contract basis is exploitation of labour and hence in the present case, the very offering of the appointment on contract basis is against the law and is liable to be condemned. The Hon'ble Supreme Court in the said judgment has held that labour statues were meant to protest the employees and there has been a tendency on the part of managements by showing the workers on contract or short term or casual although they have been doing regular work and hence globalization/liberalization cannot be at the human cost of exploitation of workers.

11. That the claimants humbly pray that the Hon'ble Court may kindly be pleased to pass an award in favour of the claimants and against the management and direct the reinstatement of the claimants with full back wages and continuity of service.

For this act of kindness, the claimants shall always remain grateful to this Hon'ble Court.

Written Arguments on behalf of management. Wherein it stated as follows:—

Preliminary Submissions:—

I. That the claim has been filed by the workman alleging illegal termination and praying for direction from this Hon'ble Tribunal to direct the management to reinstate the services of the workman.

II. That National Institute of Fashion Technology (in short called hereinafter as "NIFT") was set up in the year 1986 for the purposes of imparting high quality of education in the field of fashion technology and ancillary areas. That the said Institute is a recognized premier institute of the country and operates under the aegis of the Ministry of Textiles, Government of India. The said Institute is a well-reputed Institute, nationally and internationally, where exemplary standard of education are imparted and maintained. The said Institute is a national institute with eight regional centers. The NIFT headquarters is at Delhi, and there are eight regional centers in Delhi, Mumbai, Chennai, Gandhinagar, Calcutta, Hyderabad, Rae Bareli and Bangalore, The eight NIFT centers are directly under the supervision and control of the NIFT headquarter where all policies governing NIFT are formulated are implemented.

OBJECTIONS:—

III. That the dispute raised by the workmen is a frivolous and vexations dispute. The present dispute is barred since the workmen had already raised the said dispute by way of a Suit bearing no. 782/99 titled 'Sanjay Kumar & Ors. V. NIFT before the District Court, Tis Hazari.

IV. That the present court should not take the cognizance of the present dispute its jurisdiction since the claimants are not "workmen" as defined under Section 2(s) of the Industrial Dispute Act, 1947. The National Institute of Fashion Technology is not an "industry" as defined under section 2(j), Industrial Dispute Act, 1947 because it is a teaching Institute and is not any business, trade, undertaking, manufacture or calling or employers. NIFT is a fashion technology College which has been set up to

impart specialized education in this field. As such, only teaching and consulting staff is employed along with certain Class IV officers to carry out day to day work requirements.

SUBMISSION OF FACTS AS PER RECORDS.

V. It is most respectfully submitted that the present claim has been filed by workmen/attendants who were earlier employed on daily wages basis and their employment was on a day to day basis.

VI. Further, it is submitted that the workmen were employed on a daily wage.The said persons were given the terms and conditions of appointment in which it was clearly stipulated that the services of these persons was liable to be terminated without giving any reason by giving a one month's notice. The copies of the appointment letters dated 20.7.96. and 9.08.96 and extension letters dated 14.10.96, 19.12.96, 4.9.96, 17.3.98, 29.6.98, 6.1.99 and 7.7.99 are exhibit as EXHIBIT DW1/2 (COLLY).

That however, at the time of recruiting concerned attendants, it was made clear to them that their services were liable to be terminated at any time by giving them one months notice. The relevant term of the appointment of said attendants reads as follows:—

> "...Your appointment will be purely on a daily wages basis and can be terminated at any time by giving one month notice without signing any reasons either side..."

It is pertinent to point out that during cross-examination, the workmen did not deny the same.

VII. That *vide* order dated July 26.1999, in an effort to give better conditions of service, all daily wagers were given the option of changing their basis of employment on contract basis, where the monthly remuneration worked out to be higher than monthly wages of the workers.

VIII. Further, it is submitted that the order of the employer dated July 26, 1999 was passed pursuant to a policy decision taken by the employer Institute. The copy of order dated July 26, 1999 is exhibited as EXHIBIT DW1/1.

IX. Further, it is submitted that the services of the claimants were not illegally terminated but the conditions of service were sought to be changed in view of the fact that it was through beneficial for both the attendants and the employer to engage their services on a contract basis.

X. Further, it is submitted that on the July 26, 1999, a notice was given to these attendants but they did not present themselves to be appointed on contract basis. They had absented themselves from work, and had not exercised the option of taking the new more beneficial service terms, instead they preferred to file the present proceedings, whereas, all other persons falling in that same category were absorbed at that point of time for working on the new service conditions offered at that relevant time. The copy of notice dated July 26, 1999 has already been exhibited as EXHIBIT DW1/1.

It is pertinent to point out here that the workmen have not denied the same in cross examination.

XI. Further, it is submitted these attendants were not employed against any posts of permanent nature inasmuch as he work done by them differed depending upon the requirement of the Institute. Further, the permanent attendants against the said posts were already recruited, and there is no vacancy for any permanent employee in this category.

XII. Further, it is submitted that the Institute is a National Fashion Technology College which is highly specialized in nature and thus the need of attendants are not very high. The Institute is akin to a college where mostly classes are held and no other kind of labour is required to be done. Further, the job of attendant is extremely fluid and they are shifted from one department to another depending upon the need. The nature of the job is mostly temporary. The Institute is famous for holding national level Fashion shows, workshop, seminars etc. It is at such times that most of these attendants are required on a daily wage basis. Moreover, in order to maintain a check on the expenditure of the Institute, surplus attendants are not recruited.

XIII. Further, it is submitted that due to heavy surplussage which was creating a financial burden on the Institute, in July 1999 a policy decision was taken by the Governing Body of the Institute that the services of all the attendants working in the Institute on a daily wage basis would be terminated and that only the attendants who would qualify the interview held by the Institute, would be re-employed on a contract basis. This arrangement was preferred over the last arrangement because an attendant would be employed on a yearly basis instead of a daily basis which would lead to certainly of employment for a particular period for the employee. Even the monthly remuneration of the employee was stipulated to be Rs. 3000 which worked out to be higher than the monthly wage of a daily wager which was Rs. 2139.80 Rs. 82.30×26 days, if calculated as per the prescribed statutory minimum wage. Thus, when a daily wager is terminated on cogent and valid reason, there is no grievance that the claimants can raise. It is also stated that the employer is an autonomous body governing under the Ministry of Textiles, therefore it has to follow all the laws including Minimum Wages Act and thus wages paid to these attendants were fixed as per law and there was no violation of any law at any point of time.

XIV. Further, it is submitted that the action of the employer Institute was not *malafide*. In fact, all other daily wagers were absorbed on a contract basis at that time *vide*

order dated 2.8.99, 3.8.99, 5.8.99, 9.8.99 and 11.8.99, on the new service conditions offered at that relevant time. The copies of the letter dated 2.8.99, 3.8.99, 5.8.99, 9.8.99 and 11.8.99, are exhibit as EXHIBIT DW1/3. The daily wagers before this Hon'ble Forum were not appointed since there was no vacancy for any permanent employee in this category and the need of more attendants was not very high. Moreover, these attendants had not approached the employer Institute, and instead had chosen to first file a Civil Suit, which they had withdrawn afterwards on 27.3.2001, in pursuance of the Conciliatory proceedings before the Asst. Labour Commissioner ©. It is stated that for the reasons best known to them. The applicants in the present matter had denied to accept the offer to be recruited on much beneficial terms of engagement *i.e.* on contract basis, as similarly placed to other employees, by the employer Institute. The employer Institute even tried for early settlement of the matter *vide* letter dated 17,1,2000 before the Asst, Labour Commissioner © but applicants herein denied the same. The copy of the letter dated 17.1.2000 is exhibit as EXHIBIT DW1/4.

XV. Further, it is submitted that if assuming that the services of the Applicants were terminated and there is any question for determination before this Hon'ble Tribunal then it is limited to the extent whether the services of the present attendants were illegally terminated or not. It is not the case here that there are any permanent vacancies or there is any unfair trade practice or the said attendants ought to be regularized as alleged. It is stated that as per the settled proposition of law, in case of contract employee whose services were terminated after expire of the contract period, there is no need to comply with the condition of notice as per Section 25F of the Institute Dispute Act, 1947. Therefore, there was no violation of Section 25F of the Industrial Dispute Act, 1947, as alleged.

JUDGMENTS RELIED UPON :—

1. [2006 (4) SCALE 197]

SECRETARY, STATE OF KARNATAKA AND OTEHRS *VERSUS* UMADEVI AND OTHERS

(A copy of the judgment is annexed herein)

That the Constitutional Bench of the Hon'ble Supreme Court categorically held in paragraph 24 as follows:

> "therefore, consistent with the scheme for public employment, his court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules".

It is most respectfully submitted that in view of the Constitutional Bench Judgment, the workmen have not been illegally terminated and that they cannot be re-instated as claimed by the claimants in the present claim.

2. [1997(4) SCC 391]

HIMANSHU KUMAR V1DYARTHI AND OTHERS

***VERSUS* STATE OF BIHAR AND OTHERS**

(A copy of the judgment is annexed herein)

That in this judgment the Hon'ble Supreme Court categorically held in as follows:

> "Every department of the Government cannot be treated to be an industry. When the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. The petitioners were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Their disengagement from service cannot be construed to be a retrenchment under the Industrial Dispute Act. The concept of retrenchment therefore cannot be stretched to such an extend as to cover these employees. Since the petitioners are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary.

It is most respectfully submitted that in view of the constitutional Bench judgment, the workmen have not been illegally terminated and that they cannot be re-instated as claimed by the claimants in the present claim.

Conclusion

Therefore, it is submitted that in view of the above-stated facts, cross-examinations of the workmen , evidence of the management, above-made arguments and the above two judgment cited, the present claim requires to be dismissed with exemplary cost.

Thereafter I have heard the arguments of Ld. A/Rs for the parties at length.

Ld A/R's for the parties also filed written arguments which were introduced on record.

In the light of contention and counter contentions I perused the pleadings in statement of claim, written statement, rejoinder and evidence of the parties. Principles laid down in the cited rulings and settled law of Hon'ble Supreme Court and Hon'ble Delhi High Court.

Perusal of reference made to this tribunal shows that case of 5 workmen was referred for adjudication to this tribunal.

Out of 5 workers Shri Sundeep Kumar and Manoj Kumar Rana have not filed any claim statement nor they adduced any evidence in support of their case. So their case cannot be considered in want of claim statement and their evidence.

Workmen Sh. Satish Kumar, Sanjay kumar and Benjamin Tigga filed their Statement of claim and adduced their evidence so their case is being decided on the basis of appreciation of evidence on record in the light of settled law.

My issue wise finding is as follows.

Issue No. 1

Burden to prove issue No. 1 was on management but management has adduced no evidence to prove issue no. 1 in its favour. Moreover Labour Ministry has made reference for adjudication to this Tribunal on 21.6.2000. Against reference dated 21.6.2000 management filed no writ petition which was the available remedy for its alleged stand. Hence order of reference has become final. Therefore management is estopped to say that this Tribunal has no jurisdiction. Specially in the circumstances when no evidence was given by management and no ruling cited on behalf of management on the point of jurisdiction.

Issue No. 1 is liable to be decided in favour of workmen and against management.

Which is accordingly decided.

Issue No. 2

Burden to prove issue No. 2 also lies on management but management adduced no evidence to prove this issue. In want of which there is no option to this tribunal except to decide this issue against management and in favour of workmen.

Hence Issue No. 2 is decided in favour of workmen and against management.

Issue No. 3

In this issue questions of determination mentioned in the Schedule of reference are included.

Schedule of reference shows that Labour Ministry while sending reference to this Tribunal referred the following dispute for adjudication.

"Whether the termination of service of S/Sh. Sanjay Kumar, Sandeep Kumar, Manoj Kumar Rana, Satish Kumar Benjamin Tigga by the management of NIFT, Ministry of Textile is legal and justified?"

In this background burden was on management to prove whether the termination of services of Shri Sanjay Kumar, Satish Kumar and Benjamin Tigga is legal and justified but management adduced no plausible, credible and reliable evidence on the relevant point.

While workmen adduced all plausible, credible and reliable evidence which they could produce.

In this background management has utterly failed to discharge its burden while workmen prove their case.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr. *Vs*. Gitam Singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh *Vs*. Haryana State Agriculture Marketing Board & Anr. AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar (2008) 9 SCC 48c6, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workmen of the instant case was not appointed by following due procedure and as per rules. They had rendered service with the respondent as a casual workers, thus. Compensation of Rs. 50,000 (Rs. Fifty Thousand Only) by way of damages as compensation to each of the workman/claimant by Management after expiry of period of limitation of available remedy against Award, That will meet the ends of Justice.

Thus Reference is decided in favour of workmen and against Management.

Award is accordingly passed.

Dated : 30/1/2014

HARBANSH KUMAR SAXENA, Pesiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 948.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबंद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 17/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/143/2010-आईआर(बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 17/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 26/02/2014.

[No. L-41011/143/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVENRMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT :

BINAY KUMAR SINHA,

Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad, Dated 20th January, 2014

Reference (CGITA) No. 17/2011
Adjudication Order No. L-41011/143/2010-IR(B-I)

1. The Divisional Railway Manager,
   Western Railway, Pratapnagar,
   Baroda

2. The Chief Project Manager,
   Western Railway, Kalupur,
   Ahmedabad

3. The Senior Divisional Finance Manager,
   Western Railway, Pratapnagar,
   Baroda ....First Party

And

Their Workman (Pensioner)
Shri Sunil Kumar S. Roy
Through The General Secretary,
Western Railway Kamdar Sangh,
78/9-C, National Highway,
Gandhidham (Kutch) ....Second Party

For the First Party : None

For the second Party : Shri O.P. Vashishatha,
General Secretary,
W. Rly. Kamdar Sangh,
Gandhidham

AWARD

The Government of India Ministry of Labour, New Delhi by its order No. L-41011/143/2010-IR(B-I)) dated 07.03.2011 under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the dispute specified in the Schedule to this tribunal for adjudication:

SCHEDULE

"Whether the action of the management of Chief Manager, Western Railway, Ahmedabad and senior Divisional Manager, Western Railway, Baroda in not paying medical allowance of Rs. 100 per month to Shri Sunil Kumar S. Roy, a pensioner of railway, is legal and justified? To what relief the Union/workman is entitled?"

2. The 2nd party Union/pensioner filed statement of claim (Ext. 3) to the effect that on recommendation of 5th pay commission, Ministry of Railway, Railway Board under RBE No. 22/2008/ Letter No. PC-V/496 (No. PC-V/98/1/7/1 dated 07.02.2008 issued order for payment of Rs. 100 per month to Railway pensioners/family pensioners *w.e.f.* 01.12.1997. But this benefit was not provided to the pensioners Sunil and so dispute was raised. Hence seeking for the relief for directing Rly. Administration to pay fixed medical allowance to all affected pensioners/family pensioners.

3. The 1st party appeared executing Vakilpatra in favour of Shri N.J. Acharya, Rly. Panel Advocate and W.S. (Ext. 7) was filed pleading interlia that the reference is not maintainable and the Union/ pensioner has no legal cause of action.

4. Subsequently, on application of the 2nd party/ Union by order dated 04.09.2013 (Ext. 10) the appearance of Shri N.J. Acharya, Advocate was disallowed U/s. 36(4) of the I.D. Act, 1947.

5. The 2nd party/Union on 10.01.2014 filed withdrawal pursis (Ext. 11) on the ground that D.R.M. (E) Baroda under his letter No. E/789/11/ WR.M.S. dated 10.12.2013 has expressed his intention to grant fixed medical allowance to the disputant pensioner Sunil Kr. S. Roy on the

condition of withdrawal of this reference case (Copy enclosed).

6. In such view of the matter, there is no need for adjudication as per Schedule since 1st party W.R. is ready to provide fixed amount of Rs 100 p.m. for which DRM(E) BRC has wrote letter dated 10.12.2013 to C.P.M. ADI for sanctions the fixed medical allowance to disputant pensioner Sunil Kr. S. Roy. In the light of withdrawal pursis, the reference is dismissed as withdrawn.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 949.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 770/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/22/2002-आईआर(बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 949.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 770/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 26/02/2014.

[No. L-12012/22/2002-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVENRMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT :
BINAY KUMAR SINHA,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 7th January, 2014

Reference (CGITA) No. 770/04
Reference (I.T.C.) 20/2002 (old)
Adjudication Order No. L-12012/22/2002/IR(B-I)

The Branch Manager,
State Bank of India,
Kevadia Colony branch,
Dist.-Narmada-393151 ...First Party

And

Their Workman
Shri Naginbhai Kalidas Mahayavanshi
A-78, Opp. Government Hospital,
Taluka-Nanded, Kevadia Colony,
Dist. Narmada-393151 ...Second Party

For the First party : Ms. Meenaben Shah, Advocate
For the Second party : None

AWARD

Under adjudication order No. L-12012/22/2002-IR (B-I) New Delhi dated 09.05.2002 the appropriate Government/Ministry of Labour referred the dispute under clause (d) and Sub-section (1) and (2A) of Section 10 of the I.D. Act, for adjudication to the Industrial Tribunal Baroda under the terms of reference specified in the Schedule:

SCHEDULE

"Whether the action of the management of State Bank of India through the Branch Manager, Kevadia Colony Branch, Dist. Narmada in terminating the services of Shri Naginbhai Kalidas Mahyavanshi, Peon in the year 1995 is justified? If not, what relief the concerned workman is entitled?"

2. The 2nd party workman in spite of repeated notice failed to appear in the court and also failed to submit statement of claim whereas the 1st party (Bank) appeared and executed power (Vakilpatra) in favour of Ms. Meenaben Shah, Advocate of Gandhi Associates. The case record received in this CGIT-cum-Labour Court on 30.12.2010. Thereafter fresh notice was sent to the 2nd party workman to file statement of claim but again the workman failed to appear.

3. So it can be manifestly presumed that the 2nd party workman who raised the Industrial disputes against his termination has no interest in this reference. For more than a decade opportunity was given to him but the workman slept over the matter having no interest in this case.

4. The 1st party filed pursis (Ext. 7) that the 2nd party is not interested in continuing this dispute so the reference case be disposed of in the interest of Justice.

5. The reference case is fit to be dismissed since S.P. workman has failed to submit statement of claim. So the action of the management of S.B.I. through the Branch Manager (1st party) in terminating the services of the workman Naginbhai in the year 1995 is held to be justified. This reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 950.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गुजरात इंडस्ट्रीयल को-ओपरेटीव बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 37/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/9/2006-आईआर(बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Gujarat Industrial Co-operative Bank Ltd. and their workmen, received by the Central Government on 26/02/2014.

[No. L-12012/9/2006-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVENRMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT :
BINAY KUMAR SINHA, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad, Dated 6th February, 2014

Reference (CGITA) No. 37/2006
Ajdudication Order No. L-12012/9/2006-IR(B-I)

The Branch Manager,
Gujarat Industrial Co-operative Bank Ltd.,
Raapura Branch, Near GPO, Vadodara,
Vadodara (Gujarat) ...First Party

And

Their Workman
Sh. Rameshchandra Nanalal Patel
C/o. S.R. Adhyru, 11/A,
Sheetal Kunj Society, Manjalpur Naka,
Vadodara ....Second Party

For the first party : Shri S.R. Dave, Advocate
For the second party: None

AWARD

The Ministry of Labour/Government of India *vide* order No. L-12012/9/2006-IR(B-I), New Delhi dated 20.03.2006 referred the dispute for adjudication to this Tribunal under clause (d) of sub-section (1) and sub-section (10) of the I.D. Act, 1947, on the terms of reference specified in the Schedule:

SCHEDULE

"Whether the action of the management of Gujarat Industrial Cooperative Bank Ltd. in terminating the services of Shri Rameshchandra Nanalal Patel w.e.f. 02.04.1986 is legal, proper and just? If not, to what relief the concerned workman is entitled to?"

2. The case of the 2nd Party as per statement of claim (Ext. 6) is that he was working as a peon in the establishment of the 1st party since 1975. He was issued a show cause notice on 26.09.1984 regarding eight different misconduct/ like going on strike irregularities leaving workplace etc. The domestic enquiry was not conducted in fair way, no reasonable opportunity given to defend, principles of natural justice not followed and he was illegally terminated as per adverse findings of inquiry report w.e.f. 02.04.1986 prayers made for reinstatement with back wages.

3. As against this the 1st party pleaded *inter alia* as per w.s. (Ext. 9) is that the reference is not maintainable. 2nd party has no valid cause of action and that after valid and proper enquiry he was terminated from the services on 02.04.1986 and that the 2nd party is not entitled to any relief and the reference is fit to be dismissed.

4. The 2nd party left to attend the court since long and failed to lead evidence whereas 1st party used to appear through its lawyer. It appears that 2nd party (workman) has lost interest in this reference. So it is not desirable to keep the case further pending for evidence of the 2nd party. The reference deserves to be dismissed. The following order is passed.

ORDER

The terms of reference specified in the Schedule is answered in favour of the 1st party that termination of the 2nd party (Workman) w.e.f. 02.04.1986 is legal, proper and justified.

This reference is dismissed for non-prosecution.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 951.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 76/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/36/2012-आईआर(बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Northern Railway and their workmen, received by the Central Government on 26/02/14.

[No. L-41011/36/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVENRMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

I.D. No. 76/12

Present :
RMU, C/o Hem Raj Sharma,
House No. 570/66,
Gopalpuri, Alambagh,
Lucknow

And

The Divisional Railway Manager,
NR. DRM Office Hazaratganj,
Lucknow

AWARD

1. Central Govt. MoL, New Delhi *vide* above reference No. L-41011/36/2012-IR (B-I) dated 27.07.2012 has referred the following dispute for adjudication to this tribunal.

2. Whether the demand of the Union RMU Lucknow for appointment of Sri Phool Chand son of Bhagwan Deen, Rajesh Kumar Son of Chhota Lal, Ram Keshari son of Sunder Lal, Tribhunal Singh son Raj Pati, Ram Kumar son of Jagmohan, Sri Chandra son of Baboo Lal, Ram Lakhan son of Baboo Lal, Arun Kumar son of Shambhu Dahayal, Jai Narain son of Ram Sewak, Dhiru Prasad son of Ram Pyarey, Baboo Lal son of Dulam and who have worked as substation porter from Jan. 80 to December 84 after appointment of other such substation porter by the management of railway is legal and justified? If not to what relief the workman is entitled?

3. After receipt of the reference order as above several notices were issued by the tribunal to both the parties, but none has appeared from the side of the claimant nor there is any statement of claim.

4. None appeared from the side of the management. On few occasion worker's side put their appearance but have not filed any claim statement in support of their claim.

5. It therefore, from the circumstances of the case appears that the Union or the workman is not interested in prosecuting its case. As such the tribunal is of the confirm opinion that it is a case in which neither there is any statement of claim nor the claimant is interested in prosecuting his case, therefore, the case is bound to be decided against the union and workman for want of pleadings and proof.

6. Accordingly it is held that the workman/union is not entitled for any relief pursuant to the present reference order.

RAM PARKASH, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 952.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 17/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/26/2010-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 952.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of ICICI Bank and their workmen, received by the Central Government on 26/02/2014.

[No. L-12012/26/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 12th February, 2014

PRESENT : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 17/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of

Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of ICICI Bank Limited and their workman]

BETWEEN

Sri M. Subramanian : 1st Party/Petitioner

AND

The Chief Manager : 2nd Party/Respondent
ICICI Bank Limited
4th Floor, Arihant Insight
No. 24, South Phase
Ambattur Industrial Estate
Ambattur
Chennai-600058

Appearance:

For the 1st Party/Petitioner: Sri T. Ramkumar & C.D. Sugumar, Advocate

For the 2nd Party/Respondent: M/s S. Ramasubramaniam & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, *vide* its Order No. L-12012/26/2010-IR (B-I) dated 08.03.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of ICICI Bank Limited in terminating services of Sri M. Subramanian, Ex-Sub-Staff w.e.f. 06.02.2002 is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 17/2011 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. The averments of the petitioner in the Claim Statement in brief are these:

The petitioner had joined the service of the Respondent Bank, in its Dindigul branch on 08.12.1989 as Sub-Staff. The petitioner had been discharging his duties in a sincere and diligent manner. In the year 1997 the petitioner was transferred to Paganeri branch of the Respondent Bank in Sivagangai District. The petitioner got married in November 1998. The wife and unborn baby of the petitioner died during delivery. The petitioner became mentally ill consequently. His physical health was also badly affected by the incident. The petitioner sent a letter to the management requesting to transfer him any other branch in Sivagangai District. But the Respondent arbitrarily transferred him to Thiruppur branch on 03.09.1999. Though the petitioner made a request, the management declined to withdraw the order of transfer. Though the petitioner joined the Paganeri branch in March 2000 he had to take leave for several days to take care of his mother. He has sent leave application to the Management. The petitioner got married again in December 1999. He had to be with his wife at the time of delivery. He sent several representations to the Respondent request to transfer him to any of the branches in Sivagangai District. However, this was not considered. The petitioner then received a letter alleging that he has been unauthorizedly absenting from duty, and also asking him to resume duty on or before 31.12.2001. The allegations made in the letter are false. Though the petitioner reported for duty on 31.12.2001 he was not allowed to resume duty by the Manager of the branch. He had then sent letters to the Management stating that he is interested in continuing in the service of the Respondent. In spite of this the Management had issued an order on 04.02.2002 stating that it had come to the conclusion that the petitioner had voluntarily abandoned the service of the Respondent. The petitioner had further requested the Respondent to permit him to rejoin duty. However, this was turned down. So the petitioner had raised the dispute. The petitioner is entitled to be reinstated in service with back wages, continuity of service and other attendant benefits.

4. The respondent has filed Counter Statement contending as follows:

The dispute raised by the petitioner is barred by limitation as the claim is made after more than 5 years from the date of his dismissal. The petitioner was an employee of the erstwhile Bank of Madura Ltd. When the bank merged with the respondent with effect from 10.03.2000 its employees including the petitioner have become employees of the respondent. The petitioner had joined the service of Bank of Madura Ltd. on 01.02.1989 and was on probation for a period of 6 months. He was confirmed in service on 08.12.1990. In 1999, he was transferred to Paganeri branch. He had absented from duty from 02.10.1999 to 16.10.1999, 17.10.1999 to 30.10.1999, 31.10.1999 to 13.11.1999, 14.11.1999 to 30.11.1999, 01.12.1999 13.12.1999 and 31.12.1999 to 31.01.2000. Since the petitioner claimed that he is ill, he was asked to appear for medical examination. But rather than appearing before the medical board, he reported for duty on 01.03.2000. Then, he absented himself again from 13.03.2000 to 01.04.2000, 22.04.2000 to 29.04.2000, 08.05.2000. 12.05.2000 to 15.05.2000, 19.05.2000 to 20.05.2000 and 31.05.2000. A charge Sheet was issued to him on 26.07.2000 for unauthorized absence for 187 days. A reply was given by the petitioner. This was considered by the management and taking a lenient view for unauthorized absence, a warning was given to the petitioner. In spite of this, the petitioner continued to be unauthorizedly absent subsequently also. He was absent for 253 days unauthorizedly in between 16.06.2000 to 02.06.2001. A letter was sent to the petitioner calling upon him to report for duty forthwith. Even after this, the petitioner did not report

for duty. The management sent a letter to the petitioner calling upon him to resume duty on or before 06.08.2001 and also stating that in case of failure it will be construed as abandonment of service by the petitioner. Even after this, the petitioner continued to unauthorizedly absent himself. So the Management sent a letter to the petitioner giving him a final chance to resume duty on or before 31.12.2001. Even after this, he did not resume duty. The respondent then issued letter dated 04.02.2002 treating the petitioner's unauthorized absence from duty for 421 days for the period from 25.11.2000 to 04.02.2002 as voluntary abandonment of service. The unauthorized absence of the petitioner has caused irreparable hardship to the Respondent. Considering that the petitioner was a chronic absentee he was dismissed from the service of the Respondent with effect from 07.02.2002. The petitioner was paid almost Rs. 9,00,000 towards his PF and about Rs. 40,000 towards his Gratuity on 10.06.2002 by crediting his account with the Bank. The petitioner had written to the Respondent stating that he has received the amount without any protest. The petitioner had raised the dispute after a delay of 7 years. The claim of the petitioner that he has been discharging his duties in a sincere and diligent manner is denied. It is incorrect to state that the petitioner had reported for duty on 31.12.2001 but he was no allowed to resume duty. So also the allegation that the petitioner had sent letter to the Respondent requesting him to allow him to resume duty is false. The Respondent did not receive any such letter from the petitioner. The petitioner had refused to utilize the opportunities given to him to resume duty. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and the documents marked as Ext W1 to Ext W15.

6. the points for consideration are:

(i) Whether the action of the respondent bank in terminating the services of the petitioner with effect from 06.02.2002 is legal and justified?

(ii) What if any is the relief to which the petitioner is entitled?

The Points

7. The petitioner had entered the service of erstwhile Bank of Madura Ltd. in the year 1989. When Bank of Madura Ltd. merged with the Respondent Bank. the employees of the Madura Bank Ltd. including the petitioner have become employees of the Respondent. The initial appointment of the petitioner was at Dindigul branch of Madura Bank Ltd. On 03.09.1999, while the petitioner was working Thiruppur branch he was transferred to Paganeri branch. The case of the Respondent is that the petitioner is a chronic absentee and that while he was an employee of Paganeri branch he had absented himself from duty unauthorizedly on several days. He had given peptic ulcer as the reason for his long absence. But when he was asked to appear for a medical examination, rather than doing this, he had reported for duty. Again he had continued to be absent intermittently and frequently. Earlier, after he was unauthorizedly absent for 187 days from 30.10.1999 to 31.05.2000 a Charge Sheet was issued to the petitioner. He had given a reply and the Respondent had taken a lenient view and had let him off with a warning. According to the Respondent, subsequently also he continued to be unauthorizedly absent. After his absence for 253 days from 16.06.2000 to 02.06.2001 a letter was issued to the petitioner asking him to report for duty. He had refused to attend duty even after this. Still another letter was issued to the petitioner asking him to resume duty on or before 06.08.2001. Still the petitioner was not willing to resume work. The Respondent is said to have issued still another letter giving a chance to the petitioner to join duty. Ultimately, the Respondent had issued a letter of warning to the petitioner telling him that his action will be treated as voluntary abandonment of service. The respondent dimissed the petitioner from service with effect from 07.02.2002 considering that he has abandoned the service.

8. The respondent has not conducted any enquiry before dismissal of the petitioner from service. When the letter said to have been issued by the Respondent calling upon the petitioner to resume duty was not honoured by the petitioner, the Respondent has considered it as voluntary abandonment of duty by the petitioner and had dismissed the petitioner from service.

9. The petitioner has filed affidavit of examination to substantiate his case. Ext. W6 is the letter received by the petitioner from the Respondent directing to report for duty on 31.12.2001. According to the petitioner, he had reported for duty but he was not allowed to resume duty on 31.12.2001. His case is that he had sent three representations to the Respondent subsequently requesting to permit him to resume duty. Ext. W9 is said to be one of the copy of the representations sent by the petitioner to the Respondent to permit him to join duty. However, there is nothing to show that any such representation was received by the Respondent. During cross-examination, the petitioner had stated that he has got a courier receipt to show that Ext. W9 was sent by him. But he has not produced it. The petitioner had admitted during this cross-examination that of an on he was absent from duty for 421 days. He also stated that he had submitted leave application for half the period of absence but did not submit any applications for the remaining period of absence. He also admitted that does not remember for how many days he had applied for leave. He then stated that was remaining absent from duty bacuase he had to take care of his aged mother.

10. The Respondent has examined MW1 to prove the case that the petitioner was a chronic absentee. MW1

was the Chief Manager in the personal department in erstwhile Bank of Madura Ltd. This witness has stated that the petitioner had absented himself from duty on 02.10.1999 to 31.01.2000 and there was no news from him at all during this period. Since he had claimed that he is suffering from Peptic Ulcer, he was asked to appear before the Medical Board for medical exmination. After this, the petitioner has reported for duty without appearing for medical examination. MW1 has then stated that the petitioner was then absenting himself again and accordingly the Charge Sheet marked as Ext. W8 was issued to him for his unauthorized basence for 187 days. The Respondent had taken a lenient view and had allowed the petitioner to continue in service with a warning. However, the petitioner was again absent for 253 days and letter was issued to him asking him to report for duty. Ext. W6 is one of the letters issued to the petitioner asking him to report for duty. Though the petitioner was asked to be on duty by 31.12.2001, he has not obliged and continued to be absent unauthorizedly. MW1 has stated that Ext. W8 order terminating the service of the petitioner was issued after giving several opportunities to him to resume duty. The petitioner had refused to utilize the opportunities and had continued to be absent unauthorizedly.

11. Though, documents are not marked on the side of the Respondent to prove the absence of the petitioner from duty continuously, the evidence of MW1 coupled with the admission made by the petitioner and his own documents would establish that the peitioner was a chronic absentee. In fact even from the averments made by the petitioner in his Claim Statement it self it could be seen that he was mostly absent from duty. The petitioner had stated in Para-6 of the Claim Statement that after he had joined in Thiruppur branch in March 2000, he had taken leave for some days for which he claims to have sent leave applications to the Repsondent. The petitioner refers to absence from duty for other period also in his Claim Statement. However there is no case for him that he has sent applications for leave for such absence and those applications were sanctioned. Thus it is very much clear that the petitioner was a person who had given scant regard for his job, that though he was absenting himself frequently, he did not care to submit even application for leave.

12. The counsel for the petitioner had referred to a decision of the Delhi High Court in Fateh Chand Vs. Presiding Officer, Labour Court and Another reported in 2012, 2 LLN 130 and argued that the absence of the petitioner from duty could not be considered as abandonment of service. In the above decision it has been held that abandonment of service is voluntary relinquishment of one's services with intention not to resume the same and that mere absenteeism for a continuous period would not establish what the employee had abandoned his service. However, the Apex Court had taken a different view in the matter. In the decision in North Eastern Karnataka Transport Corporation Vs. Ashappa reported in 2006 5 SCC 137, the Apex Court had held that remaining absent for a long time cannot be said to be a minor misconduct. The action of the management in dismissal of the Bus Conductor who was absent from duty unauthorizedly and continuously was upheld by the Apex Court. Again, in the decision in Vijay Vs. Indian Airlines Ltd. And Others reported in 2013 (10) SCC 253, the Apex Court has held that abndonment of service is unilateral action of the employee and such an act cannot be termed as retrenchment. The Apex Court has further held that absence from duty in the beginning may be a misconduct but when such absence is for a long period it may amount to voluntary abandonment of service resulting in termination of service automatically without necessitating any further order from the employer.

13. In the present case, the petitioner had been absenting himself from duty continuously. In spite of this, the Respondent had been making several attempts to make him resume duty. Letters were sent by the Respondent asking him to resume duty as seen from Ext. W6 produced by the petitioner himself. It was when the petitioner failed to report for duty in spite of repeated such attempts, the management was constrained to presume that the petitioner had abandoned service voluntarily and had terminated the service of the petitioner. An employer could not be expected to keep an employee who refuses to be on duty continuously. The action of the Respondent in terminating the service of the petitioner was only the natural culmination of the action of the petitioner in voluntarily abandoning the service of the Respondent. There is nothing improper or illegal in the action of the Respondent.

14. Another aspect that requires consideration is the undue delay in raising the dispute. The petitioner was terminated from service by order dated 04.02.2002. The dispute is raised by the petitioner only in 2010 with a delay of 7 years. The counsel for the petitioner has referred to the decision in Ajav Singh Vs. Sirhind Cooperative Marketing and Processing Service Society Ltd. And Another reported in 1999 (6) SCC 82 in support of his argument that delay in raising the dispute is not of consequence. In the above decision the Apex Court has held that Article 137 of the Limitation Act are not applicable to the proceedings under the Industrial Disputes Act and that relief under the Act cannot be denied to the workman merely on the ground of delay. However, in a subsequent decision Haryana State Cooperative Land Development Bank Vs. Neelam reported in 2005 1 LLJ 297 the Apex Court has held that "the Labour Court considering the conduct of the workman in approaching the Court after more than 7 years to be a relevant factor for refusing to grant the relief cannot be said to be an irrelevant one". The present case is one where the petitioner had absented himself from duty unauthorizedly for several days together and had refused to report for duty in spite of repeated letters from the

Management. It was accordingly the management had treated the petitioner as one who had abandoned the service and had terminated him from service. On going through the very averments in the Claim Statement it could be seen that the petitioner had no valid excuse for the delay in raising the dispute at all. Even for his absence he had no valid reason. What he has stated in the Claim Statement is that he lost his wife and unborn baby during delivery and this made him physically and mentally ill. However, he had got married again within a year. He had not given any reason for not raising the dispute earlier. The action of the petitioner would amount to his total abandonment of service of the Respondent. He has remained quiet for a period of 7 years before he raised the dispute. This itself would strengthen the case of the Respondent that he had abandoned the service voluntarily. Termination of service of the petitioner was only the consequence of his abandonment of service. When all these aspects are considered, it could be seen that the claim of the petitioner to reinstate him in the service of the Respondent is without any justification. I find that the petitioner is not entitled to any relief.

In view of my discussion above, the reference is answered against the petitioner.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th February, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union:	WW1, Sri M. Subramanian
For the 2nd Party/ Management:	MW1, Sri N. Muthukrishnan

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex. W1	04.12.1999	Appointment order issued to the petitioner
Ex. W2	10.08.1999	Representation of the petitioner regarding his transfer
Ex. W3	03.09.1999	Order of the Respondent, transferring the petitioner from Paganeri branch to Tiruppur Branch
Ex. W4	06.09.1999	Representation of the petitioner, requesting the management to withdraw its order of transfer
Ex. W5	05.08.2001	Representation of the petitioner, requesting the respondent management to transfer him to any of the branches in Sivagangai District
Ex. W6	19.12.2001	Letter of the Respondent, directing the petitioner to report for duty on 31.12.2001
Ex. W7	31.12.2001	Representation of the petitioner regarding his transfer
Ex. W8	04.02.2002	Order of termination issued to the petitioner
Ex. W9	03.04.2002	Representation of the petitioner requesting the management to permit him to join in duty
Ex. W10	18.02.2009	Dispute filed under Section-2A of the Industrial Dispute before the Assistant Commissioner of Labour
Ex. W11	Sep. 2009	Counter Statement filed by the Respondent
Ex. W12	09.12.2009	Rejoinder filed by the petitions
Ex. W13	08.03.2001	Reference of the dispute made by the Govt. of India
Ex. W14	26.07.2000	Copy of the Charge Sheet issued by the Respondent to the petitioner
Ex. W15	28.07.2001	Copy of the letter sent by the Respondent to the petitioner regarding unauthorized absence

On the Management's side

Ex. No.	Date	Description
		Nil

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 953.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसी एन एफ रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गुवाहटी के पंचाट (संदर्भ संख्या 04/2010) प्रकाशित करती है जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/98/2009-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2010)

of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the management of N.F. Railway and their workman, received by the Central Government on 26/02/2014.

[No. L-41011/98/2009-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri L.C. Dey, M.A., LL.B., Presiding Officer
CGIT-cum-Labour Court, Guwahati

Ref. Case No. 04 of 2010

In the matter of an Industrial Dispute between:—

The Management of N.F. Railway, Maligaon, Guwahati

-Vrs-

Their Workman Sri Thaneswar Kalita, represented by the Rail Mazdoor Union, N.F. Railway, Maligaon.

APPEARANCES

For the Workman : Mrs. M. Bora, Advocate

For the Management : Mr. K.C. Sarma, Advocate

Date of Award: 12.02.2014

AWARD

1. This Reference has been initiated on an Industrial Dispute exists between the employer in relation to the Management of N.F. Railway and their workman, which was referred to by the Ministry of Labour, Government of India, New Delhi vide their order No. L-41011/98/2009-IR (B-I) dated 03.05.2010. The Schedule of this Reference is as under.

SCHEDULE

"Whether the demand of Rail Mazdoor Union for fixation of seniority of Shri Thaneswar Kalita in the cadre of Open Line Organisation, from the date of his screening in construction organization is legal and justified? If yes, what relief the workman is entitled?"

2. On receipt of this order for adjudication of the dispute as mentioned above, this reference case has been registered and notices were served upon the concerned parties who appeared and submitted their respective claim statement/written statement.

3. The case of the Rail Mazdoor Union, N.F. Zone, Pandu, in brief, is that the workman Thaneswar Kalita was employed in the post of Khalasi Helper in construction organization as a casual labourer on 16.3.84 in the establishment of Senior Divisional Electrical Engineer, Guwahati, North East Frontier Railway in short (Sr. DEE/GHY/NF. Railway) and he was posted under Senior Section Engineer, Electrical at Pandu Power House of N.F. Railway. The workman was under the administrative control of Assistant Divisional Electrical Engineer, Maligaon (in short ADEE, Maligaon) of the Electrical Department headed by its Principal Officer designated as Chief Electrical Engineer, N.F. Railway at its Headquarter, Maligaon. The workman's seniority is looked after by the office of the Assistant Personnel Officer, Guwahati, N.F. Railway. The workman after the fulfillment of requirements and the norms, was given temporary status of service in the construction wing; and he was screened for permanent service on 1.4.84 against the 60% construction reserve post as per the Rules under the Dy. Chief Electrical Engineer, construction, Maligaon (In short Dy. CEE/CON/MLG) vide office order No. E/227/CON/Elect dated 15.05.1996. Thereafter the workman was absorbed in the Railway service as regular employee and posted against the permanent post of Khalasi Helper on 1.4.84. The workman rendered his service in the construction organization in the capacity of khalasi helper and was promoted to the post of Lineman which was a grade-III post and continued in that organization upto 1997. The Government of India, Ministry of Railway, Railway Board issued letter from time to time to the General Manager of All Indian Railways and Production Units regarding staffing in construction organization by creating construction reserve post for posting in construction wings in Indian Railways and the said lists were circulated by N.F. Railway vide its No. Misc. 1378/No. E/1/19(C) dated 14.7.1988 to meet the manpower requirement in construction Organisation. The Construction reserved post are permanent including the workman. In implementing the policy of the Railway Board as mentioned above in order to shedding extra workforce not required for the work in the construction organization, the management sent in lots workmen occupying the posts of the said Construction Reserve to the Open Line wing of the N.F. Railway under official authority, and the workman belonging to one such lot was directed to report to the Divisional Electrical Engineer, Guwahati of the Open line Wing as per his spare letter dated 23.10.1997 issued by Sr. Section Engineer (electrical) (construction) which was effected as per the direction of letter No. C/255/CON/Seniority/CL Pt. VII (Elect) dated 01.10.97 issued by the General Manager (CON)/(P)/Maligaon, N.F. Railway as mentioned in his spare letter dated 2.10.97. Accordingly the workman resumed his work as Khalasi in the scale of Rs. 2550/- to Rs. 3200/- on 24.10.1997 under DEE/Guwahati and on being appointed against a permanent post the workman had a lien in the substantive capacity in the permanent cadre of N.F. Railway and on his transfer to Open Line he was entitled to seniority on this basis of his lien.

Further pleading of the Union is that the workman on absorption in regular post of Khalasi was placed in Group D post of the 60% non-gazetted regular posts earmarked for the construction Organisation and as the workman was eligible for a lien in the substantive post where it is maintained his seniority with reference to his date of absorption irrespective of the Oganisation where his services were utilized in the regular capacity. As such, on his placement his seniority is to be fixed in the seniority unit under Sr. DEE/GHY/N.F. Railway with the maintenance of his slot. According to the inter-se seniority the occupants of the post of Khalasi among the 60% non-gazetted regular posts earmarked for the Construction Organisation as a whole. But it was not done and the workman was placed in the establishment of Sr. DEE/GHY/N.F. Railway far below in the pay scale of Rs. 2550 to Rs. 3200 in the said establishment who had been still other than his juniors in respect to his date of absorption in the 60% non-gazetted regular post earmarked for the Construction Organisation vide letter No. E/255/I/Pt. III dated 12.03.1999 issued by the APO/GHY placing the workman at serial No. 35 which was a wrong assignment of slot in the seniority list. The Union mentioned that due to loss of seniority the workman lost chances of promotion whereas his juniors advanced far ahead in service career by earning promotion by dint of this wrong seniority. The workman has also been deprived of promotional benefit under the policy of restructuring of cadre because of the said anomaly in fixation of lien and consequent seniority. On being aggrieved, the workman represented to the authorities through his Union his grievance for correction of his seniority and for granting other relief like promotion over and before his juniors, but it yield no result. The Union also submitted that the date of appointment to the substantive post in permanent cadre is the universal criteria for deciding the place of an employee holding a civil post in the gradation list kept for the category of service which he belongs to; and the workman is senior to the existing staff under the establishment of DEE/ Guwahati although the date of appointment to the substantive post in permanent cadre by way of absorption of the workman in the Construction Organisation on 1.4.84. The Management has mistaken in fixing the seniority of the workman below the subsequent appointees reckoning the date of reporting of the workman against his permanent service in the establishment of DEE/Guwahati i.e. on 24.10.97 from the electrical section of the Construction Organisation as the Railway is a single organization including the open line in the Construction Organisation and the workman did not join the electrical establishment of the open line with his post, but only on being released by the Management of the Construction Organisation to the open line under the terms of letter No. E/227/CON/Elect (Screening) dated 3.10.1997 and the letter No. C/255/CON/Seniority/CL Pt. VII (Elect) dated 1.10.97 is issued by the General Manager (CON)/(P)/Maligaon, N.F. Railway. The workman also did not leave the Construction Organisation and joined the Open Line Organisation of the same zonal Railway on his own but under official direction. The Union has relied upon the provision of Rule 312 of the Indian Railway Establishment Manual, Rule 312 volume-I of 89 Edition. By depriving the praspect of career advancement and monetary benefits that would have come to the workman's right guaranteed under the Articles 14, 16 and 21 of the Constitution of India. Hence, the workman prayed for passing award granting the workman his long and seniority from 1.4.94 and directing the Management to implement the award with retrospective effect along with consequential benefits of promotion/financial up-gradation/promotion under policy of cadre restructuring at par with his juniors, and to correct all seniority list where the workman has given wrong seniority position, and to maintain correct seniority list.

4. The Management, on the other hand, pleaded, inter-alia, that the reference is not maintainable in its present form as well as in law and fact and hence, it is liable to be dismissed; that the statement made in paragraphs-2 and 3 are not correct and the facts are on record; and that the statements made in paragraphs-4, 5 and 6 of the claim statement are not correct and hence, denied by the Management. It is stated by the Management that it is not correct that the workman was promoted to the post of Lineman since the workman failed to mention the date of promotion and the reason behind this for non disclosing the promotion date is self explanatory. It is also mentioned by the Management that the post of Open line is a Revenue post while the posts attached to Construction organization are work charge posts which is a decided fact in N.F. Railway based on the circumstances of the urgent occasion and also need based though both are under the same Railway Organisation. All the incumbents working in the work charged posts in the construction organization having lien in the open line, their seniority is maintaining among the staff comprising both Open line and Construction Organisation; and while any regular selection is processed in open line the staff of both the Open line and Construction Organization are called for, as per seniority.

Further case of the Management is that no normal selection procedure is done in Construction organization; while in exceptional circumstances, which is time based and need based only, some adhoc promotion are made in the Construction Organisation amongst the Construction staff itself only. But there is no claim of adhoc promotion of Open line staff in Construction Organisation, and while regular selection is made in Open line, Construction staff are being called as per seniority and as a matter of right. The Railway being a vast Organisation the organizational structure of work force in N.F. Railway at the time under question do have substantial distinction between the Open line and the Construction staff force establishment procedure is concerned. It is also contended by the Management that the workman Thaneswar Kalita was

transferred to Open line as per provisions exclusively admissible to Open line staff only and his seniority was also fixed, and subsequently the same is maintained in the Open line itself. The Management categorically denied the averment made in para Nos. 13, 14, 15 and 16 of the Claim Statement and mentioned that the seniority of the workman was not maintained in the working place, it is fixed in Open line correctly and there is no scope for any junior staff to be promoted by the superseding the workman at any point of time. Hence, the Management contended that the case of the workman is false and frivolous and it is nothing but gross abuse of law, and as such, it is liable to be dismissed with no award.

5. In order to establish their respective cases, the Union examined 2 witnesses including the workman while the Management examined their solitary witness Sri Anil Kumar Sarma, the Office Superintendent, Office of the Assistant Personnel Officer, N.F. Railway, Guwahati. Both the parties have also produced a number of documents in order to substantiate their respective pleadings.

6. The workman witness No.1, Sri Mridul Kr. Das, General Secretary, RMU, N.F. zone, Pandu, in his evidence mentioned that the workman Thaneswar Kalita is an employee of the establishment of Senior Divisional Electrical Engineer, Guwahati, who was appointed as casual labourer on 16.3.84. The workman was screened for permanent service on 1.4.84 against the 60% construction reserve post under the Chief Electrical Engineer (Construction), Maligaon vide Office order marked as Exhibit-1. The workman had been working in the Construction Organisation upto 1997 and thereafter he was promoted to Grade-3 post of lineman in Construction Organisation against permanent post. Subsequently the workman was spared from Construction Organisation and he was sent to open line on 23.10.07. vide Railway letter No.EL/CON/LMG/Estt/2 dated 23.10.97 marked as Exhibit-2 and the construction reserved posts are permanent post which is evident from the Circular letter marked as Exhibit-3. Hence, the workman is entitled to lien in the open line from the date of his absorption as regular employee placed under Construction Organisation and his date of appointment in substantive post in permanent cadre in the gradation list maintained in the open line in his grade Khalasi helper. The workman was sent to the establishment to Senior Divisional Electrical Engineer, Guwahati and accordingly his seniority in this establishment in his group-D grade would be according to his lien reckoning from the date of his appointment i.e. 1.4.84 but the Management did not do so. Instead of maintaining the seniority of the workman in the establishment of Senior Divisional Engineer, Guwahati in his Group-D grade of Khalasi and workman was given a slot in the gradation list of Khalasi(P). Due to the said wrong assignment of seniority the workman has been superseded by his juniors reckoning the date of his absorption in permanent post who was appointed later than the workman but placed in the gradation list above the workman for which the workman has been deprived of the opportunity of getting promotion including the promotion through restructuring of cadre. In support of his contention of the workman witness No. 1 has relied on the provisions of Rule 12 of Railway Establishment Manual, Volume-1 of 1989Edition together with the provisional seniority list of Khalasi(P) in the scale of Rs. 2550 to Rs. 3200 as on 01.04.1988 marked as Exibit-4. In his cross-examination the W.W.1 categorically denied the suggestion that the overall seniority counted from the date of joining in the open line and a per the policy Circular marked as Exhibit-1 seniority of the workman would have been counted from the date of his posting in the open line i.e. in 1997.

The workman Sri Thaneswar Kalita stated that he was screened for permanent service on 1.4.88 against the 60% Construction Reserved Post under Dy. CEE, Construction vide Exhibit-1, and he was promoted to the grade-3 post of Lineman while in service in the Construction Organisation. He mentioned that the Railway is divided into two wings in the N.F. Railway, one is Open Line construction under General Manager, N.F.Railway and the other is Construction wing headed by another General Manager (Construction), Subsequently the workman was spared from construction Organisation on 23.10.97 vide Exhibit-2. He also mentioned that as he was a permanent railway workman from the date of his absorption from 60% reserved post he had the enhancement the right to lien in the open line Organisation in suitable Units which will be decided by the Management with effect from the date of his permanent absorption and his seniority would be fixed from the date of his screening. He also mentioned that the construction reserve posts are permanent as it appears from the Circular Letter marked as Exhibit-3. He again supporting the statement of W.W.1, stated that he is entitled to a lien in the open line from the date of his absorption as a regular employee placed under construction of N.F. Railway, and his date of appointment in the substantive post in permanent cadre is the universal criteria for deciding his seniority in the open line for his grade of Khalasi helper. Thje workman contended that his seniority is to be maintained from the date of his screening on his transfer on administrative ground from Electrical Wing of the construction organization to the Electrical Establishment of Senior Divisional Engineer, Guwahati in open line under Rule 312 of Indian Railway Establishment Manual, Volume-I of 1989 marked as Exhibit-5. He has also produced the seniority list showing the junior most personnel got promotion earlier in terms of the date of appointment date of birth, than the senior most personnel borne in construction Organisation whose lien was fixed under Sr.DEE/Guwahati of Lumding Division vide Exhibit-6; and the provisional seniority list of Khalasi Helper as on 1.4.2000, marked as Exhibit-7.

During his cross-examination he mentioned that he has got the less pay about Rs. 2000 per month after joining in the open line but he has not submitted any document in respect of drawing less pay.

The Management witness No. 1 Sri Anil Kumar Sarma, Office Superintendent, Office of the Assistant Personnel Officer, Station Road, Guwahati in his deposition stated that the workman Thaneswar Kalita was originally a staff of Construction Organisation who joined there on 16.3.84 as casual labourer, and the workman was allowed temporary status of casual labourer on 11.3.85 under Construction Organisation. Subsequently on 1.4.84 the workman was approved for posting against permanent post in the Construction Organisation, and thereafter the workman became eligible to be transferred to open line of Railways. Thereafter the workman joined as Khalasi, Group-D on 24.10.97 as per the option preferred by the workman. He aslo mentioned that the workman was promoted on ad hoc basis as Fitter-cum-Driver, Grade-3 and the relevant entry in respect of the ad hoc promotion of the workman on 13.2.1990 as Fitter-cum-Driver, Grade-3 was made in the Service Book of the workman vide Exhibit-A and Exhibit-A(1). The seniority of the workman has been maintained in the open line with effect from the date of his joining i.e. 24.10.97, as per the Railway Rules, the workman is not entitled to get seniority in open line on the basis of his approval in the screening as on 1.4.84 in the construction organization. He also added that both the open line and construction organization are under same umbrella but the status of both are different as the open line is concerned with Revenue Post while the construction is concerned with work charged, time based, need based and for project oriented post; if a person joined as per selection in the open line directly before the date of the joining of the construction organization the seniority of the said workman who joined later in open line will be considered above that of the workman who joined earlier in construction organization. The Divisional seniority is maintained independently, in case of posting of an employee from one Division to another on administrative ground his inter se seniority would be maintained but if the said employee is transferred at his own instance his seniority will not be maintained, and as the workman has been posted in open line at his own request/option his seniority in the construction organization would not be maintained. As such, the claim of the workman for maintaining his seniority as on the date of his screening in construction organization is not tenable. During his cross-examination the Management witness No. 1 admitted that the right to lien of the workman was acquired on 1.4.1984. He also said that the seniority of the employee is counted from the date of his regular absorption in any organization of the Railway and the workman is entitled to all the benefits of railway employees except seniority and promotional benefit although he joined earlier in construction organization. He also admitted that there is no record to show the option on request of the workman available in their office. He also denied the suggestion tendered by the Union that the workman is not entitled to seniority as well as promotional benefit on the basis of his permanent absorption in the construction organization.

7. On completion of hearing from both the parties I have heard argument from both the sides at length. The Union also submitted a written argument. From the evidence and the documents relied upon both the sides it is found admitted that the workman joined in construction organization of N.F. Railway on 16.3.84 as casual workman and he was absorbed in permanent post of construction reserved post after his approval in the screening on 1.4.84; and that the workman was spared form construction organization on posting in open line on 23.10.97. Now the vital issue involved of this dispute is whether the seniority of the workman is to be maintained with effect from the date of his permanent absorption i.e. 1.4.84 in the construction organization on his posting in the open line. On scrutiny of the Railway memorandum No.52/96 dated 15.5.96 proved as Exhibit-1, it appears that the workman Sri Thaneswar Kalita was duly screened by the Screening Committee and approved by the competent authority under letter No. Dy.CEE/CON/MLG and he was absorbed against permanent post of 60% construction reserved sanctioned post and his name has been reflected at serial No. 23 of the said Circular letter (Exhibit-I) and he was spared on 23.10.97 from construction organisation for reporting to his new assignment. The provisional seniority list of Khalasi in the scale of Rs. 2550—3200 of open line proved vide Exhibit-4 shows that the name of the workman Thaneswar Kalita appears at serial No. 35 showing his Date of Birth as 29.4.1966, date of appointment as 16.3.84/24.10.97 and in the said document a good number of employee (Khalasi) whose date of birth, date of appointment are much later than those of the workman, have been placed senior to the workman. Thus it is clear that the seniority of the workman has been counted from the date of his joining in the open line ignoring his render the service with effect from 1.4.84 against the permament vacancy in construction organization.

Mr. Das, the representative of the Union submitted that the Railway Board vide their letter No. E(NG).II/78/CL/12 dated 14/16.10.1980 and No. E(NG).II/85/CL/6 dated 28.11.86 and 19.5.87 made clear provision for maintenance of seniority and he referred para-12,17, 17.2,17.5 of the said Master Circular which provide protection of the status in stages of casual labourer as follows:

"Seniority:

12. Service prior to absorption in the regular cadre will not count for seniority, which will be determined on the basis of their regular appointment after due screening/selection vis-a-vis other regular Railway servants, subject

to the provision that if the seniority of certain individual Railway servants, subject to the provision that if the seniority of certain individual Railway servants has already been determined in any other manner pursuant to Judicial decision or otherwise, the same shall not be altered.

17.2 Absorption i.e. appointment against a regular vacancy, will be on the basis of screening and not by selection. The Screening Committee should at least consist of three members including an officer belonging to SC/ST community and another to minority community.

17.5 After working out the vacancies in Gr.-D to be provided for the absorption of casual labour in regular employment in accordance with the instructions in force, a list of casual labour eligible to be considered should be drawn equal to the number of vacancies worked out plus 25% thereof. In drawing the list, only those who are borne on the current casual labour register, excluding those who had been absent on two occasions when called for screening earlier, should be considered. The list should be prepared in the order of seniority of all eligible casual labour in the unit of screening which may be fixed by the Railway, based on the total service/cumulative aggregate service."

Mr. Das, representative of the Union also submitted that in Railway substantive appointment is regulated by provision of Indian Railway Establishment Code, Volume-I, Rule-238 which provides that two or more Railway Servant can not be appointed to the said permanent post at the same time; a Railway servant can not be appointed substantively to two or more permanent posts at the same time; and a Railway servant can not be appointed substantively to a post on which another Railway servant holds a lien. He also mentioned that Rule 239 defines lien as unless in any case it be otherwise provided in these Rules a Railway servant on substantive appointment to any permanent post acquires a lien on the post and causes to hold any lien provisionally acquired on any other post; and these provisions under Rule 238 and 239 are applicable in case of the present workman on absorption in a regular post with effect from 1.4.84. Mr. Das also added that the construction organization does not maintain a cadre of permanent staff for the rank of Khalasi and substantive absorption or appointment can be given in permanent cadre is maintained only there and after absorption in open line one can always go back to his substantive post by the dint of his lien in the post in open line. Thus the seniority of the workman was maintained in the open line with effect from the date of his joining on 24.10.97 is not legal and justified and as such, the management committed a grave illegal and wrong assignment of the seniority to the workman in the Establishment of Sr. DEE, Guwahati in his Grade-D cadre of Khalasi and instead in giving a slot in the gradation list of Khalasi (P) far below the staff appointed much later than him in the open line. He cited the example of one workman namely Sri Gopal Sarkar who was appointed on 11.4.1997 was given to 3rd slot in the gradation list whereas the workman absorbed on 1.4.88 was given the 30th slot. In support of his contention Mr. Das referred the documents marked as Exhibit-7 and Exhibit-6.

8. Mr. K.C. Sarma vehemently opposing the submission of the representative of the Union stated that the workman was appointed initially as casual worker as Khalasi under Construction Division and he was absorbed against permanent vacancy on 1.4.84; and thereafter at his instance the workman was taken in open line on 23.10.97. As such, as per the provision of the Railway Board's Circular No. E(NG) 1-85-SR.6/14 dated 22.1.86 and Rule 312 of Indian Railway Establishment Manual, Volume-I (Revised Edition 1989) the workman has abandoned his seniority due to his offering application for transfer from Construction Organisation and hence, he is not entitled to the seniority on the basis of his absorption in construction organization. Mr. Sarma, Learned Advocate also submitted that there is no example of promotion to higher post in open line superseding the workman, nor the workman ever agitated before the Management for maintaining his seniority on the basis of his permanent absorption in the construction organization.

9. On careful scrutiny of the evidence on record and having regard to the submission of the learned counsel for the workman as well as learned Advocate for the Management it appears that although the management is taking plea that the workman was transferred from construction organizaton to open line at his request and his seniority was fixed with effect from the date of his joining in the open line organization, and his seniority was fixed below the existing staff in his grade in open line as per provision of Rule 312 of Indian Railway Establishment Manual, Volume-I (Revised Edition 1989). But there is no iota of evidence to show that the workman has submitted any representation for transferring him from construction organization to open line even the Management. At the instance of the workman, the Management was directed to produce the representation or any application submitted by the workman for transferring him from construction organization to open line, but they have failed to produce any document. Further the workman categorically mentioned that he was transferred from construction organization to open line on administrative ground and his contention was supported by the workman witness No. 1 and even the Management did not adduce any rebuttal statement challenging trustworthiness of this contention of the workman. In the spare letter marked as Exhibit-2 there is no mention to the effect that the workman was spared from construction organization to join in the open line at his own request. Thus it is found well established that the workman was transferred from construction organization to open line in the interest of Administration. As per provisions of Rule 311 of Indian Railway Establishment Manual, Volume-I (Revised Edition 1989) the

seniority of the Railway servant on transfer from one cadre to another in the interest of the Administration is regulated by the date of promotion/date of appointment to the grade as the case may be and the provision of Rule 312 of the said Manual as relied upon by the Management in case of the present workman, it is applicable in case of transfer from one Railway to another and from one cadre/Division to another cadre/Division on the same Railway in case of request of the workman.

In the Railway Board Master Circulat letter No. E(NG)II/78/CL/12 dated 16.10.1980 and letter No. E(NG)II/85/CL/6 dated 28.11.1986 and 19.5.1997 and at Para-12 it has been provided that the seniority of the workman will be determined on the basis of their regular appointment after due screening selection vis-a-vis other regular Railway Servant subject to the provision that if the seniority of individual Railway servant has already been determined in any other manner in pursuance to the judicial decision or otherwise, the same shall not be altered. In para-17.2 of the said Circular it is mentioned that absorption i.e. appointment against a regular vacancy will be on the basis of screening and not by selection, and the service prior to absorption in regular cadre will not count for seniority which will be determnined on the basis of regular appointment after due screening/selection. Rule 239 of Indian Railway Code of the Account Department Pt. I (revised Edication 1984) Chapter-2 runs as under:—

> "239. Lien— Unless in any case it be otherwise provided in these Rules a railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provsionally acquired on any other post."

In this connection my attention has been drawn by the learned counsel for the workman to the Writ petition Nos. 147, 320-69, 454, 4335-4434/83 etc. disposed of by the Hon'ble Supreme Court wherein it was ordered as:

> "We are of the view that the Scheme prepared by the Railways setting out the list of project casual labour with reference to each department in each. Division and also in regard to each category, namely, skilled, semi-skilled and unskilled, is in compliance with the judgement and order dated 18.4.1995 given by this Court and that obsorption of these with the longest service be made in accordance with such list. Mr. Krishnamurti Iyer states that this process will be completed within two months from today. The matter is disposed of in these terms".

In H.S. Vankani V/s State of Gujrat of Gujarat, AIR 200 SC 1714, wherein it was held that the seniority plays a vital role in employee's service career. Unsetting the seniority leads to resentment, hostility and loss of enthusiasm to do quality work. Hon'ble Supreme Court in Rajendra Pratap Singh Yadav V/s State of Uttar Pradesh reported in AIR (2011) SC 2737 held that the sanctity of the final seniority list must be maintained unless there are very compelling reasons to do so in order to do substantial justice. It is also decided by the Hon'ble Apex Court in a case reported in AIR 2009 SC 137 that inter se seniority between direct recruits and promotees the principle of continuous length of service ought to be applied being most equitable rule.

10. In view of the above discussion & the findings & having regard to the ratio of the cases cited above, I find no reason to discord the please of the Union that the workman was transferred from construction to open line in the interest of management of the N.F. Railway and as the workman has been working against permanent post after his screening in Construction Organisation w.e.f. 1.4.1984 he is entitled to his seniority with effect from the date of his absorption against permanent vacancy on 1.4.1984 under construction organization. Thus, the fixation of the seniority of the workman with effect from 23.10.1997 i.e. from the date of his absorption in open line, by the Management is against the principle of substantial justice as well as natural justice.

11. In the result, it can safely be held that the demand of the Rail Mazdoor Union for fixation of the seniorty of Sri Thaneswar Kalita in the cadre of open line Organisation from the date of his screening (i.e. with effect from 1.4.1984) in the construction organization is legal and justified. Accordingly the workman is entitled to his seniority in the open line with effect from 1.4.1984 in the cadre in which he was absorbed against permanent post. The workman is also entitled to other consequential benefits as per the Railway Establishment Manual and other Circualr/memoranda issued by the Railway Board from time to time. Accordingly this Reference is decided on contest in favour of the Union.

12. No cost awarded.

Send the Award to the Government as per law.

Given under my hand and seal of this Court on this 12th day of February, 2014 at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 954.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 588/2005) प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/272/1999-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 954.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 588/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 26/02/2014.

[No. L-12012/272/1999-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Shri Kewal Krishan, Presiding Officer.

Case I.D. No. 588/2005

Registered on 23.8.2005

Sh. Manphool Singh, C/o Sh. Tek Chand Sharma,
25-Sant Nagar, Civil Lines,
Ludhiana (Punjab)-141001

...Petitioner

Versus

The Regional Manager, State Bank of India,
Regional Office, Region-III (Haryana & UT- Chd.)
Sector-85, Chandigarh-160008

...Respondent

APPEARANCES:

For the workman Sh. Tek Chand Sharma Adv.

For the Management Sh. N.K. Zakhmi Adv.

AWARD

(Passed on 5.2.2014)

Central Government *vide* Notification No. L-12012/272/99-IR(B-I) Dated 15.11.1999, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of SBI represented by Regional Manager, SBI Region No. III (Haryana & U.T. Chandigarh) Sector 8C, Chandigarh, in imposing punishment of dismissal from service to Sh. Manphool Singh, Cashier-cum-Clerk *vide* order dated 5.5.1988 is just and legal. If not to what relief the workman is entitled to and from which date?"

In response to the notice the workman appeared and submitted statement of claim pleading that he had been wroking with the repondent bank as Cashier-cum-clerk at Mandi Dabwali when he was placed under suspension *vide* order dated 13.6.1986. He was issued charge-sheet dated 8.6.1986 alleging misconduct to which he submitted reply. But the same was not considered and Inquiry Officer was appointed who conducted the inquiry and submitted his report. On the basis of the Inquiry report, he was dismissed from service. Now according to him, the inquiry was not legal and valid as the Inquiry Officer was not appointed as per provisions of law and notice was not displayed on the bank's notice board regarding the appointment. That the charge-sheet served was not legal and did not contain the list of witnesses/list of documents. That the Inquiry Officer acted in a biased manner and did not appreciate the evidence led before him. That the report of the Inquiry Officer is not based on any evidence. The disciplinary authority also did not apply its mind before issuing the show cause notice to which he submitted reply which was not considered at all and he was illegally dismissed from service. Considering the conduct of the authorities concerned, he did not prefer any appeal. That his dismissal is illegal and the same be set aside with continuity of service.

Respondent-bank filed reply pleading that a proper and valid inquiry was held and the workman was given due opportunity to defend himself and on the basis of the Inquiry, after serving a show cause notice to the workman, he was dismissed from service as he was found guilty of gross misconduct. That there is no illegality in the inquiry proceedings or in the dismissal order. That the workman was required to prefer an appeal before the Appellate Authority under the law and since he did not prefer any appeal, the industrial dispute is premature.

In support of its case the workman appeared in the witness box and filed his affidavt reiterating the case as set out in the claim petition.

On the other hand the management examined M.L. Palta and Sh. V.K. Jain.

Sh. M.L. Palta is the person who conducted the inquiry. He placed on record the inquiry proceedings Exhibit MW-2/2 (37 pages).

Sh. V.K. Jain filed his affidavit reiterating the case of the respondent as set out in the written statement.

I have heard Sh. Tak Chand Sharma counsel for the workman and Sh. N.K. Zakhmi, counsel for the management.

It was vehemently contended by learned counsel for the workman that the appointment of the Inquiry Officer was not made according to Rules and no order in this respect was given to the workman and therefore the finding of the Inquiry Officer is illegal. He has further contended that the Inquiry Officer did not act in a fair manner as he himself put probing questions to the witnesses and to the

prejudice of workman. That the Inquiry report is not based on any evidence and even the complainant did not appear before the Inquiry Officer and thus the inquiry report is not legal and consequently the action taken on its basis dismissing the workman is also not sustainable. I have considered the contentions raised by the learned counsel and perused the inquired proceedings.

The workman was charge-sheeted on the following grounds *vide* charge-sheet dated 18.6.1986.

1. That on 3.4.1986, while officiating as teller, he made a payment of withdrawal for Rs. 500 relating to Savings Bank Account No. 24/7866 maintained by one Sh. Om Prakash at our Mandi Dabwali Branch. The signatures of the account holder on the front and reverse of the withdrawal from are apparently forged.

2. Again on 16.4.1986 at his instance withdrawal for Rs. 500/- was authorized without pass book by Sh. H.R. Bishnoi, Accountant and he attested the signatures of Sh. Om Prakash, accountholder appearing on the reverse of the withdrawal in the style known to me. The payment was collected by him from Sh. B.R. Silha, officiating Teller and at that time he was accompanied by another person whom the officiating teller thought to be the depositor. Further, he posted the withdrawal in the ledge account although he was not working on that seat. The signatures of Sh. Om Prakash, appearing on the front and reverse of that withdrawal form materially differ with those recorded at the branch and are apparently forged.

3. On 2.5.1986, a sum of Rs. 1000 has been deposited in the above account and signatures appearing on the deposit voucher are similar to those appearing on the above-mentioned two withdrawal forms.

4. Although he was not working on the Saving Bank Seat, he posted two withdrawals for Rs. 500 and Rs. 100 on 16.4.1986 and 17.4.1986 in the ledger sheet of account No. 24/7866 on 17.4.1986 he also completed the pass book and handed over the same to the depositor without making entries of the two withdrawals dated 3.4.1986 and 16.4.1986 for Rs. 500 each and intentionally showed the pass book a balance different to that appearing in the ledger account. The balance in the pass book has been authenticated by him.

When he did not submit reply to the charge-sheet, the competent authority passed order dated 12.9.1986 appointing the Inquiry officer as well as Presenting Officer and the workman was accordingly informed. The Inquiry Officer conducted the proceedings and during the inquiry the photocopy of the documents relied upon by the management were supplied to him as is clear from the proceedings dated 18.12.1986. Workman also told the Inquiry Officer that he would be defended by S.N. Aneja. On the next date of hearing i.e. 23.1.1987 the workman decided to defend himself as his defence representative did not turn up. The inquiry procedings further show that witnesses were examined in his presence and were cross-examined by him. On 28.5.1987 workman did not produce any witness in his defence and on his request the case was adjourned to 19.6.1987. On that day the workman was proceeded against ex parte.

During the inquiry, the Inquiry Officer examined seven witnesses who supported the case of the bank. All the witnesses were duly cross-examined by the workman himself. Replying on the evidence produced before him, the Inquiry Officer submitted a detailed report dated 6.8.1987 holding that all the charges are proved against the workman. It is nowhere the case of the workman that he was wrongly proceeded against ex parte. It is not shown that the Inquiry officer has violated any rule or regulation by conducting the inquiry. It is specifically pleaded by the respondent bank that the appointment of the Inquiry Officer was duly displayed on the bank's notice board and it is not shown under which rule the documents and list of witnesses were to be supplied to the workman along with the charge-sheet. However he was supplied the documents during the inquiry. The report of the Inquiry Officer is based on the evidence led before it. If the Inquiry Officer has asked any question to any witness, the same do no vitiate the inquiry as Inquiry Officer was not to sit as a mute spectator and he was well within the powers to illicit the truth from the witnesses, though, it is not shown that he asked any question to the witnesses which proved detrimental to the workman. Thus the inquiry do not suffer from any illegality and the same is held to be fair and proper.

It was submitted by the learned counsel that only small amounts of Rs. 500 are allegedly misappropriated by the workman and an extreme penalty of dismissal from service has been imposed on him which is not justified. It is not disputed that banking business revolves around integrity and honesty and the same is necessary to build the confidence of the public. The workman has withdrawn amounts from the accounts of the customer and dealt with the bank books at his will which tantamount to gross misconduct on his part and he cannot take refuge that only small amounts were received. Considering the gravity and misconduct of the workman, the bank authorities rightly imposed the penalty of dismissal from service and the same do not call for any interference.

In result, the reference is answered against the workman holding that the punishment of dismissal is just and legal. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 955.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसी भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलौर के पंचाट (संदर्भ संख्या 15/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं.एल-12012/179/2003-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 955.—In pursuance of Section 17 of the Indusrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial disputes between the management of State Bank of India and their workmen, received by the Central Government on 26/02/2014.

[No. L-12012/179/2003-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 29th January, 2014

PRESENT : Shri S. N. NAVALGUND, Presiding Officer

C R No. 15/2004

I party	**II party**
Sh. Thimmaraj. No. 16, Muthyalam Koil G. Street, Bangalore - 560 001.	The General Manager, State Bank of India, No. 48, Church Street, Bangalore - 560 001.

APPEARANCES :

I Party : Shri H. H. Nagaraj, Advocate

II Party : Shri B. C. Prabhakar, Advocate

AWARD

1. The Central Government *vide* order No. L-12012/179/2003-IR (B-I) dated 26.02.2004 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of State Bank of India is justified in terminating the services of Shri R. Thimmaraj, Temporary Sub-staff *w.e.f.* 27.4.2000? If not to what relief he is entitled?"

2. On receipt of the reference from the Central Government, when notices were issued to both the parties I party entered his appearance through Sh. H. H. Nagaraj, advocate and filed his claim statement on 14.05.2004 and the II party entered its appearance through Sh. J. Satish Kumar, Advocate and filed its counter statement on 22.12.2004.

3. In the claim statement filed by the I party it is alleged that his representation raising the dispute in claiming appointment on permanent basis is based on the lines of the advertisement dated 01.08.1988 published in Deccan Herald by the Personnel Manager; State Bank of India management in line with Clause 5 of the agreement dated 17.11.1987 entered between the State Bank of India and All India State Bank of India Staff Federation and that the II party contention that each branch/office is to be treated as one establishment and temporary service put in at a branch/office alone will be reckoned for the purpose, establishes a clean deviation from the paper advertisement which reads as "Eligible category of temporary employees" 240 days of temporary service in a calendar year of 270 days of temporary service in a block of 36 calendar months or 30 days of service in a calendar year of 70 days in any block of 36 calendar months after 1.07.1975 and up to 31.07.1988 at "any one or more branches/offices under a module (Regional Office) as existing/defined as on 31st July 1988 exhibit (1) enclosed". It is further stated that he having completed 114 days of temporary service in 3 branches namely Richards Town, Kacharakanahalli and J.C. Road branch between the period 12.11.1984 to 28.04.1987 he is eligible to be appointed on permanent basis and that in this connection he has submitted an application cum declaration on 28.03.1995 furnishing the entire details. Thus he has claimed that his candidature for a permanent appointment needs to be considered on the basis of his temporary service of 114 days in three different branches and out of the total absorption made there are 30 persons having put in service of 114 days to 90 days of service so his absorption should be at par with the similar category of similar seniority.

4. It is contended in the counter statement filed by the II party that the bank has been engaging temporary employees especially in the sub-staff to work on daily wages in leave/casual vacancies of messengers and as there was a long standing demand from the association of All India Bank Employees Federation that these temporary employees should be considered for absorption in permanent vacancies, after a great amount of discussion a bipartite settlement dated 17.11.1987 was entered into and the same was subsequently modified by another agreement

dated 16.07.1988 under which all eligible temporary employees were to be given a chance for being considered for permanent absorption subject to the terms and conditions contained in the said agreement categorising them into 3 categories *viz.,*

(a) those who have completed 240 days temporary service in any continuous block of 12 calendar months or less during the period 01.07.1975 to 31.7.1988,

(b) those who have completed 270 days temporary service in any continuous block of 36 calendar months during the period 1.07.1975 to 31.07.1988 and

(c) those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1.07.1975 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months during the period 01.07.1975 to 31.07.1988. It is further contended that the aforesaid aggregate temporary services of 270 days, 240 days, 70 days or 30 days should have been put in by a daily wager at any one or more of the offices. It is further contended that candidates will be appointed in full time or part time positions and they will be treated as new entrants and will not be entitled for any back wages or difference between the wages payable to regular temporary employees and adhoc/fixed remuneration paid to them or any other attendant benefits and their appointment will be effective from the date they take up their permanent appointment.

5. It is further contended the I party was placed in the list "C" category according to his seniority which is determined according to the numebr to his seniority which is determined according to the number of days of work done during the relevant period from 01.07.1975 to 31.07.1988 and that the employees falling in A, B & C list were absorbed in that order in the vacancies arising up to December, 1994 untill the lapse of the panel in March, 1976 and though the cut off date was March 1997 the panel was kept alive upto December 1997. It is further contended the employees listed were absorbed according to the seniority against the vacancies that arise up to December 1994 and the employees who have put in 90 days service was the last employee to be absorbed. It is also denied in the counter statement relaxing some conditions for few employees side lining the I party being absorbed. It is also contended the I party being not in the service of the bank as of now in any capacity temporary or otherwise the question of continuing his service in the bank does not arise and there being no vacancies in the bank it is not possible to absorb him.

6. It is also contended in the counter statement that the I party had filed Writ Petition No. 13041/2000 on the file of the Hon'ble High Court of Karnataka and same came to be disposed of with observation that the bank can consider the case of the I party for absorption in case if the vacancies that may be created from 1997 till 05.09.2000 and in pursuance to the said order the bank has examined the case and considered and found that there are no vacancies arose as per the observations of the Hon'ble High Court and an endorsement was issued to the complainant under letter No. PER & HRD:5440/276 dated 18th December 2000 and aggrieved by that endorsement the I party filed contempt petition before the Hon'ble High Court of Karnataka and aggrieved by that the bank filed SLA before the Hon'ble Supreme Court of India in SLA No. 13095-13097/ 2001 wherein their lordships dismissed the case in favour of the bank. It is further contended that the Hon'ble High Court of Karnataka in Writ Appeal No. 6290/2000 held that if an employee is found to be eligible as per the scheme is entitled for absorption in the permanent vacancy and if an employee is found ineligible to be appopinted as per the scheme in the permanent vacancy the question of absorbing him for future vacancy does not arise. Thus it is contended the case having been reached finally before the High Court this reference deserves to be dismissed.

7. With the above pleadings when the II party was called upon to adduce evidence, initially the affidavit of Shri K.A. Ganapathi, Chief Manager (P&HRD) State Bank of India, Zonal Office, Bangalore was filed on 19.11.2005 and later since he could not be produced for cross examination giving up his affidavit a fresh affidavit of Shri Vadiraj P. Bhat, Dy. Manager (P&HRD), Zonal Office, Bangalore reiterating the counter statement came to be filed on 14.02.2006 and through him the copies of settlement dated 17.11.1987 and 16.07.1988 between the Subordinate Temporary staff and the II party bank got marked as Ex- M-1 and Ex M-2 and he is subjected to cross examination by the counsel for the I party, *Interalia*, the I party workman while filling his affidavit and examining himself on oath as WW1 got marked Ex W-1 to Ex W-22 the detailed description of which are narrated in the annexure (Ex- W-1 to W-12 have been got marked during the cross examination of MW1, whereas, Ex W-13 to W-22 have been got marked in the examination chief of WW1 dated 04.01.2007).

8. With the above pleadings, oral and documentary evidence brought on record by both the sides, after hearing the arguments addressed by the learned advocates for both the sides by Award dated 11.07.2011 the award was passed in following terms:

"The reference is allowed holding that the action of the management in terminating the services of the first party *w.e.f.* 27.04.2000 is not justified and that the first party is entitle for absorption as a last man amongst those who have been absorbed having put in service of 114 days as temporary sub-staff. He is also entitle for back wages from such date of

absorption fixed by the second party with all other consequential benefits that he would have received in the event of his absorption on that day. The second party has to work out and carry out the award within two months from the date of Gazette publication of the award by issuing him absorption order and pay the arrears and in default to comply within the stipulated period accrued arrears would be payable with interest @ 8% per annum."

9. When this award was challenged by the II Party before the Hon'ble High Court of Karnataka in W P No. 45482/2011 (L-RES) the Hon'ble High Court by Order dated 11.09.2012 set aside the said award and remitted back the matter with direction to confine to the issue referred *i.e.* as to "Whether the action of the management of State Bank of India is justified in terminating the services of Shri R. Thimmaraj, Temporary Sub Staff *w.e.f.* 27.04.2000? If not to what relief he is entitled?"

10. Persuant to the Order of the Hon'ble High Court referred to above while re-registering the reference in C R 15/2004 when notices were issued to both the sides, they entered their appearances through their respective advocates and counsel for the I Party filed his written arguments and cited the decisions reported in

1. 1. 2002 III LLJ Page 885 - Suraj Pal Singh and others *vs.* Presenting Officer., Labour Court No. 111 and another.
2. 2. LLJ 1972 SC Page 486 - Senior Superintendent, RMS Cochin and another *vs.* KV Gopinath, Sorter.
3. 3. 1978 LAB IC Page 394 - Assistant Personnel Officer, S Rly, Olvakkot *vs.* KT Anthony.
4. 4. LLJ 19814 II SC Page 386 - Surendra Kumar Verma and others *vs.* CGIT, New Delhi.

whereas, the learned advocate appearing for the II Party addressing his oral arguments relied upon the decision reported in

AIR 1997 SC 1657 - Himanshu Kumar Vidyarthi and others *vs.* State of Bihar and others.

11. In view of the order passed by Hon'ble High Court in WP No. 45482/2011 (L-RES) the point that arises for my consideration is "Whether the II Party terminated the services of Sh. R Thimmaraj, Temporary sub-staff *w.e.f.* 27.04.2000? If yes, whether such termination is justified?"

12. On appreciation of the pleadings oral and documentary evidence adduced by both the sides with the written arguments filed by the I Party counsel and oral arguments addressed by the II Party counsel my finding on the I part of the point is in the Negative and the II part also in the Negative for the following.

REASONS

13. On carefully going through the claim statement filed by the I Party absolutely I find no allegation/assertion being made his temporary services being terminated *w.e.f.* 27.04.2000 or any evidence is let in to that effect. His only claim is that pursuant to the II party advertisement in Deccan Herald dated 01.08.1988 in line with clause 5 of the agreement dated 17.11.1987 entered between the SBI and All India SBI federation he applied for his absorption/ regularisation through his application cum declaration dated 28.03.1995 furnishing the entire details which needs to be considered. Now in view of the order of the Hon'ble High Court in W P No. 45482/2011 (L-RES) in this reference there is no scope to consider such claim of the I Part. Even after the Hon'ble High Court set aside the Award passed by this tribunal dated 11.07.2011 with a direction to confine only to the issue referred the I Party neither amended the claim statement nor lead any evidence his temporary services being terminated *w.e.f.* 27.04.2000 and for what reason the same is not justified. The learned advocate appearing for the I Party in his written arguments states that in this case 240 days need not be proved as there is a statutory settlement between both the parties under Section 18 of the ID Act as well as the Rule 29 of the Karnataka Standing Order Rules as such the termination of the I Party is illegal and arbitrary. If such a argument is to be considered again this tribunal would commit the same error that was committed while passing the award dated 11.07.2011 which has been set aside by the Hon'ble High court holding that the same is outside the scope of the reference. A temporary employee if alleged and proved as contemplated by Section 25 of the ID Act that he had continuously worked for 240 days in a twelve calendar month he gets a right as contemplated under Section 25F of ID Act for being given one month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice and compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months and do not confer any right on him for being permanently absorbed in the establishment. Therefore, in the absence of the pleading and evidence by the I Party that he worked continuously for a period of 240 days in the particular 12 calendar months even if he is presumed to have been terminated from Temporary Service *w.e.f.* 27.04.2000 no fault can be found with the II Party or any relief can be granted to the I Party. In the result, I arrive at conclusion the I Party having failed to plead and prove that he served for 240 days in any 12 claendar months and terminated *w.e.f.* 27.04.2000 without complying the mandatory requirements of Section 25F of Industrial Dispute Act the alleged termination *w.e.f.* 27.04.2000 cannot be found with fault. Accordingly, while answering the point raised by me in the Negative, I pass the following.

ORDER

The reference is Rejected.

(Dictated to U D C, transcribed by him, corrected and signed by me on 29th January, 2014)

S. N. NAVALGUND, Presiding Officer

ANNEXURE - I

Witnesses examined:

MW 1 - Sh. Vadiraj P. Bhat, Enquiry Officer

WW 1 - Sh. R. Thimmaraj, I Party Workman

Documents exhibited on behalf of management:

Ex M-1 : Copy of Settlement between the Subordinate temporary staff and the second party bank dated 17.11.1987.

Ex M-2 : Copy of Settlement between the Subordinate temporary staff and the second party bank dated 16.07.1988.

Documents exhibited on behalf of the I Party:

Ex W-1 : Certificate dated 31.03.1986 issued by the Branch Manager, Richards Town of the second party bank wherein it has been stated that the first party has worked as a temporary messenger for a period of 37 days during October and November, 1985.

Ex W-2 : Certificate issued by the Branch Manager, J.C. Road Branch of the second party bank wherein it is certified the first party having worked for 15 days in September 1986, 20 days in October 1986, 19 days in November 1986 and 6 days in December 1986 totaling for a period of 60 days.

Ex W-3 : Certificate issued by the Branch Manager, Kacharakanahalli Branch of the second party bank wherein it has been certified that the first party having worked in that branch for 17 days from 29.11.1984 to 30.11.1984, 13.04.1987 to 28.04.1987 as temporary messenger.

Ex W-4 : Certificate issued by the Asst. General Manager, St. Mark's Road branch of the second party bank certifying his temporary service from 1.04.1992 to 31.12.1992 and 1.06.1993 to 31.03.1994 (405 days).

Ex W-5 : Certificate issued by the Asst. General Manager, St. Mark's Road branch of the second party bank certifying his temporary service from September 1994 to February 1995 (164 days).

Ex W-6 : Certificate issued by the Asst. General Manager, St. Mark's Road branch of the second party bank certifying his temporary service from 1.03.1995 to 27.04.1995 (34 days).

Ex W-7 : Certificate issued by the Asst. General Manager, St. Mark's Road branch of the second party bank certifying his temporary service from October 1995 to August 1996 (196 days).

Ex W-8 : Certificate issued by the Branch Manager, Ulsoor branch of the second party bank certifying his temporary service from 27.9.1999 to 30.09.1999, 1.10.1999 to 15.10.1999 & 8.12.1999 to 17.12.1999 (25 days).

Ex W-9 : Certificate issued by the Branch Manager, Church Street Branch of the second party bank certifying his temporary service from 08.05.1999 to 11.05.1999, 15.05.1999, 17.05.1999 to 17.12.1999 (20 days).

Ex W-10 : Certificate issued by the Asst. General Manager, Ulsoor Branch of the second party bank certifying his temporary service from 31.01.2000 to 03.02.2000, 05.02.2000 to 29.02.2000, 01.03.2000 to 13.03.2000, 03.04.2000, 19.04.2000 to 29.04.2000 & 08.05.2000 to 31.05.2000 (60 days).

Ex W-11 : Letter issued by the Deputy General Manager, Church Street Branch addressed to the first party regarding Writ Petition No. 13640/2000 filed by the first party regarding considering his candidature for appointment.

Ex W-12 : Xerox copy of Ex. W11.

Ex W-13 : Write Petition No. 13640/2000(S-REG) filed by the first party before the Hon'ble High Court of Karnataka dated 29th August, 2000.

Ex W-14 : Letter addressed to the Branch/Chief Manager dated 15th September 2000 by the Assistant General Manager regarding WP. No. 13640-13643/2000.

Ex W-15 : Copy of Writ Petition No. 14812, 14813, 14815, & 14817/1985.

Ex W-16 : Letter issued by the Chief Manager (P&HR) regarding recruitment of permanent part time general attendants.

Ex W-17 : Letter issued by the Chief Manager (P&HR) regarding absorption of temporary employees.

Ex W-18 : Advertisement appeared in Decan Herald News paper dated 1st August, 1998 regarding State Bank of India, Church Street, Bangalore settlement dated 17th November 1987.

Ex W-19 : Copy of Application-cum-declaration signed by the first party dated 26.03.1995.

Ex W-20 : Interview letter issued by the Chief Manager, (P) to the first party dated 24.02.1995.

Ex W-21 : Copy of 'C' list of employees of the second party bank.

Ex W-22 : Copy of the Bipartite agreement dated 07.05.1991.

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 956.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अरुनाकुलम के पंचाट (संदर्भ सं॰ 28/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/50/2010-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2010) of the Cent. Govt. Indus. Tribunal - cum - Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the manatgement of Union Bank of India and their workmen, received by the Central Government on 26-02-2014.

[No. L-12012/50/2010-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc. LL.B, Presiding Officer

(Friday the 12th day of July, 2013/21st Ashadha, 1935)

I.D. 28/2010

Workman : Shri Manoj V
S/o. Shri Velayaudhan
Mattukkad House
Copalmannam PO
Palghat-678702

By M/s. H.B. Shenoy Associates

Management : The Deputy General Manager
Union Bank of India
Nodal Regional Office
Ernakulam

By Adv. K.S. Ajayagosh

This case coming up for final hearing on 11.07.2013 and this Tribunal-cum-Labour Court on 12.07.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour by its Order No.-L-12012/50/2010-IR(B-II) dated 07.10.2010 referred the following industrial dispute to this tribunal for adjudication.

2. The dispute is:

"Whether the action of the management of Union Bank of India in not considering the candidature of Shri Manoj for regular appointment and the subsequent action in terminating him from its services without adhering to the provisions of the ID Act is fair and justifiable? What relief the workman is entitled to?"

3. After receipt of summons both parties entered appearance. Workman field claim statement alleging that he was employed as part-time sweeper against regular and permanent vacancy in the Coyalmannam Branch of the management bank in the year 1997 and since then he was continuously working without any break of service discharging the duties of a regular and permanent part-time sweeper as also that of a regular and permanent peon and at times a regular and permanent clerk as required by the bank without payment of adequate remuneration until he was illegally terminated from service on 27.11.2005 without complying with the mandatory procedure provided under Section 25F of the Industrial Disputes Act and in violation of the provisions in paragraphs 522 to 524 of the Sastri Award. Since his retrenchment was effected retaining the workmen junior to him in violation of Section 25G of the Industrial Disputes Act and para 507 of Sastri Award and fresh hands were employed immediately without affording opportunity to him for re-employment in violation of Section 25H of the Industrial Disputes Act, clause 20.12 of First Bipartite Settlement dated 19.10.1966 and paragraph 493 of Sastri Award he is entitled to be regularized and to be afforded regular appointment in the permanent services of the management bank. Hence he prays for his reinstatement with continuity of service, full back wages and other attendant benefits as a permanent part-time sweeper.

4. Management bank filed written statement challenging the validity of the reference by contending that the workman was not employed through selection process and that there exists no industrial dispute as he is not a workman coming under Section 2(s) of the Industrial Disputes Act. After denying the allegations in the claim statement it is further contended that he was not employed by the management bank against a regular/sanctioned/

permanent post and hence there is no question of retrenchment as envisaged under Section 25F of the Industrial Disputes Act and paragraphs 507, 522 to 524 of the Sastri Award. He is not entitled for reinstatement or for regularisation as claimed by him.

5. Workman filed replication refuting the contentions in the written statement and reaffirming the allegations in the claim statement.

6. Afterwards when the case stood posted for evidence workman was continuously absenting himself without any representation. In spite of several adjournments he did not turn up to adduce any evidence and hence he was set ex-parte. As the burden of proof lies on the workman to prove his case in view of the contentions raised in the written statement management did not adduce any evidence. No evidence, either oral or documentary, was adduced by him to prove his case. The initial burden cast upon him to prove that he is a workman coming within the definition of Section 2(s) of the Industrial Disputes Act and his service was illegally terminated by the management in violation of the statutory procedure provided under Section 25F of the Industrial Disputes Act is not discharged by him by adducing any evidence. Hence it can only be held that the action of the management in not considering the candidature of the workman for regular appointment and the termination of his services is legal and justifiable.

7. In the result an award is passed finding that the action of the management terminating the services of the workman without considering his candidature for regular appointment is fair and justifiable and hence he is not entitled to any relief.

The Award will come into force one month after its publication in the Official Gazette.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 957.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परादीप पतन न्यास के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं॰ 2/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-38011/3/2010-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 957.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 2/2011 of the Cent. Govt. Indus. Tribunal - cum - Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the mangament of Paradip Port Trust and their workmen, received by the Central Government on 26/02/2014.

[No. L-38011/3/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 2/2011

Date of Passing Order-12th August, 2013

Between:

1. The Director, Chennai Radha
Engineering Works, Site Office-M.C.H.P.
Paradip, A./Po. Paradip,
Distt. Jagarsinghpur (Orissa)

2. The Chairman, Paradip Port
Trust, At./Po. Paradip, Distt. Jagatsinghpur, Orissa.

... 1st Party-Managements.

(And)

The General Secretary, Paradip
Port Dock & Construction Workers Union,
Qr. No. M-C/80, Madhuban, Paradip Port,
At.Po. Paradip, Distt. Jagatsinghpur, Orissa.

...2nd Party-Union.

Appearances:

M/s. B.K. Nayak, Advocate	...	For the 1st Party-Management No. 1
Shri Deepak Rath, E.E. Mech.	...	For the 1st Party-Management No. 2
Shri A.K. Acharya, Auth. Represenative.	...	For the 2nd Party-Union.

ORDER

The 1st Party-Management No. 1 has moved a petition in this Tribunal on 28.6.2013 stating that the present case may be disposed of by passing proper order in view of the order dated 3.5.2012 passed by the Hon'ble High Court of Orissa in Review Petition No. 153/2011.

2. The allegation of the party moving the above petition is that the present I.D. case was referred by the

Central Government for adjudication to this Tribunal in pursuance of the order dated 15.11.2010 passed by the Hon'ble High Court of Orissa in W.P. (C) No. 12994/2010. But in Review Petition No. 153/2011 the order dated 15.11.2010 passed in the above W.P. has been recalled on 3.5.2012 and the dispute between the parties was directed to be placed for conciliation. Accordingly the dispute was placed for conciliation. But on failure of conciliation, a failure report was submitted to the Government and the Government, in turn, has referred the dispute to this Tribunal *vide* letter dated 31.01.2013, which has already been registered as I.D. Case No. 7/2013. Therefore the present I.D. case has become infructuous.

3. The 2nd Party-Union has not filed any objection to this petition.

4. I have heard both the parties and perused the materials on record incuding the orders passed by the Hon'ble High Court in W.P. (C) No. 12994/2010 and Review Petition No. 153/2011 (arising out of W.P.(C) No. 12994/2010). I have also perused the file of I.D. Case No. 7/2013.

5. Upon due consideration of all the materials placed before me it becomes apparently clear that this I.D. case was referred by the Central Government in view of the order dated 15.11.2010 passed by the Hon'ble High Court of Orissa in W.P.(C) No. 12994/2010. But subsequently this order was recalled by the Hon'ble High Court *vide* its order dated 3.5.2012 passed in Review Petition No. 153/2011 (arising out of W.P.(C) No. 12994/2010). Therefore the reference made *vide* letter dated 12.12.2010 by the Central Government in pursuance of the order dated 15.11.2010 has been set at naught and became infructuous at the moment when the order dated 15.11.2010 was recalled by the Hon'ble High Court of Orissa *vide* its order dated 3.5.2012. It is further apparent that by virtue of order dated 3.5.2012 a fresh reference has been made to this tribunal by the Central Government *vide* its letter dated 31.1.2013 which has been registered as I.D. Case No. 7/2013. Therefore the present reference cannot proceed along with I.D. Case No. 7/2013 as both the references have arisen out of the same industrial dispute, though one point of dispute has been left over by the Government in I.D. Case No. 7/2013. But that makes no difference as the present dispute has become non-existent in view of the recall order dated 3.5.2012 of the Hon'ble High Court of Orissa.

6. In view of the above, the present reference is liable to be returned un-answered. The reference is accordingly returned to the Government unanswered for necessary action at its end.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 958.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चैन्नई पतन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (संदर्भ सं॰ 16/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-33011/2/2012-आई॰आर॰ (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 958.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), The Central Government hereby publishes the Award Ref. No. 16/2013 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Chennai Port Trust and their workmen, received by the Central Government on 26/02/2014.

[No. L-33011/2/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 13th February, 2014

Present : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 16/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Chennai Container Terminal (Pvt.) Ltd. [CCTL(DP World) and their workman]

BETWEEN:

The General Secretary : 1st Party/Petitioner Union
The Madras Port Trust Employees' Union
SCC Anthony Pillai Bhawan, No. 34 (Old No. 9)
Second Line Beach
Chennai-600 001

AND

The General Manager— : 2nd Party/Respondent
HR/IR & Admn.
Chennai Container Terminal P. Ltd. (DP World)
Chennai Port Trust Administrative Building
Ground Floor, No. 1, Rajaji Salai
Chennai-600001

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates

For the 2nd Party/ Respondent : M/s.S. Ramasubramaniam and Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, *vide* its order No. L-33011/2/2012-IR (B-II) dated 31.01.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Chennai contractor Terminal (Pvt.) Ltd. [CCTL(DP World], Chennai Port Trust Administrative Building, Chennai in not deducting the Union subscription for a list of 30 employees (as per list attached) belonging to The Madras Port Trust Employees; Union from their salary w.e.f July 2011, despite authorization from the individual employees is legal and justified? If not to what relief the workmen are entitled to?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 16/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. The case has been posted for evidence. While so, the petitioner has filed a memo stating that the General Secretary of the Petitioner Union had bilateral talks with the Respondent Management and the Management had given positive assurance that the issue pending in the ID will be looked into. Because of this, the petitioner wanted to withdraw the Industrial Dispute with liberty to agitate the same if need arises in future.

4. In view of the memo of the petitioner there is no necessity to proceed with the case. The ID is allowed to be withdrawn with liberty to raise the issue again in case of necessity.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th February, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Document Marked:

On the petitioner's side

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 959.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरूनाकुलम के पंचाट (संदर्भ सं॰ 2/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/47/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 959.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 2/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 26/02/2014.

[No. L-12012/47/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B., Presiding Officer

(Wednesday the 27th day of March, 2013/6th Chaitra, 1935)

I.D. 2/2012

Workman : Smt. Sunithakumari V.
Vizhinjam Street
Vizhinjam P.O.
Trivandrum District
Kerala.

By Adv. Shri Ravindranathan N.S.

Management : The Assistant General Manager
Central Bank of India
Regional Office
Thyvila Road
Trivandrum

By M/s Peter & Karunakar

This case coming up for final hearing on 26.03.2013 and this Tribunal-cum-Labour Court on 27.03.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour by its Order No. L-12012/47/2011-IR (B-II) dated 14.12.2011 referred this industrial dispute to this Tribunal for adjudication.

2. The dispute is:

"Whether Smt. Sunithakumari V., was in continuous service *w.e.f.* 1993 with Central Bank of India, Kovalam Branch and her retrenchment *w.e.f.* 05.11.2010 was in accordance with the provisions of Industrial Disputes Act, 1947 and her demand for regularisation/ reinstatement is genuine? What relief the workman is entitled to?"

3. After receipt of summons both parties entered appearance and while proceeding with the case after submitting pleadings by them, the Learned Cousel for the workman has submitted that the workman was appointed in the sub-staff cadre as 'Safai Karmachari-cum-Peon' *w.e.f.* 18.03.2013 and it is not necessary to further proceed with the case. An affidavit was filed to that effect on 22.03.2013. In the affidavit, it was stated that the industrial dispute may be treated as settled without prejudice to the right of the workman to have recourse to take appropriate steps to realize the monetary benefits based on her past service in the management bank as a temporary employee. It was objected to by the Learned Cousel for the management submitting that it is not a full and final settlement to be accepted to close the reference. At that time the Learned Counsel for the workman has submitted that the appointment can be accepted as full and final settlement and hence it is not necessary to have any adjudication of the industrial dispute. A memo is also filed to that effect. Therein it is expressly made clear that there is a full and final settlement and hence the reference can be closed without any adjudication. As there is no reason to further proceed with this case the reference is closed.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 27th day of March, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 960.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरुनाकुलम के पंचाट (संदर्भ सं॰ 27/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/120/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 960.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 27/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 26/02/2014.

[No. L-12011/120/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Tuesday the 30th day of April, 2013/10th Vaisakha, 1935)

I.D. 27/2012

Workman : The General Secretary
Union Bank of India Employees Union
(Kerala)
'Chirayil', Malavila
Vedivechancoil PO
Kerala-695 501

Management : The Deputy General Manager
Union Bank of India
Regional Office
Union Bank Bhavan, Statue
Trivandrum-695 001

By Adv. K.S. Ajayagosh

This case coming up for final hearing on 29.04.2013 and this Tribunal-cum-Labour Court on 30.04.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India, Ministry of Labour by its Order No.-L-12011/120/2011-IR(B-II) dated 26.09.2012 referred this industrial dispute to this Tribunal for adjudication.

2. The dispute is:

"Whether the action of the management of Union Bank of India in imposing the punishment of "Bringing him down to a lower stage in the scale of pay by two stages" on Shri C. A. Jameskutty after his retirement *vide* Order dated 10.02.2010, is legal and justified and is against the provisions of the disciplinary action procedures dated 10.04.2002? What relief Shri C. A. Jameskutty is entitled to?"

3. After receipt of the ID in this Tribunal, summons was issued to both the parties. After accepting summons the management alone entered appearance. In spite of several adjournments union did not enter appearance and file any claim statement. Hence the union was set *ex-parte.*

4. The management filed affidavit to satisfy that the action taken against the workman for imposing the penalty is legal and justifiable. Since the union has not appeared and remained *ex-parte* without filing any claim statement it can be held that the action taken by the management is legal and justifiable based on the averments in the affidavit filed by the management.

5. In the result an award is passed holding that the action taken by the management against the workman for imposing the penalty of "Bringing him down to a lower stage in the scale of pay by two stages" is legal justifiable and is not violative of the provisions of the disciplinary action procedures dated 10.04.2012. Hence the workman is not entitled to any relief.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, Transcribed and typed by her, corrected and passed by me on this the 30th day of April, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 961.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबंद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरूनाकुलम के पंचाट (19/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/48/2011-आई आर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 961.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 19/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 26/02/2014.

[No. L-12012/48/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Wednesday the 27th day of March, 2013/06th Chaitra 1935)

I.D. 19/2012

Workman: Smt. Syamala L.
Sunil Mandiram
Kovalam PO
Trivandrum Distt.
Kerala.

By Adv. Shri Ravindranathan N.S.

Management: The Assistant General Manager
Central Bank of India
Regional Office
Thyvila Road
Trivandrum (Kerala)

This case coming up for final hearing on 26.03.2013 and this Tribunal-cum-Labour Court on 27.03.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government

of India, Ministry of Labour by its Order No-L-12012/48/2011-IR(B-II) dated 29.05.2012 referred the following industrial dispute to this Tribunal for adjudication:

> "Whether Smt. Syamala L. was in continuous service with Central Bank of India, Kovalam Branch *w.e.f.* 1997 and her retrenchment *w.e.f.* 05.11.2010 was in accordance with the provisions of Industrial Disputes Act, 1947? Whether her demand for reinstatement/regularisation is genuine? To what relief the workman is entitled?"

2. The workman filed claim statement challenging the legality and validity of her retrenchment by the management bank and making the prayer to reinstate her with back wages and attendant benefits. At the time when the case stood posted for filing written statement learned counsel for the workman has submitted that the workman was appointed in the sub-staff cadre as 'Safai Karmachari-cum-Peon' *w.e.f.* 18.03.2013 and hence there is no necessity to further proceed with this case. An affidavit was filed to that effect on 22.03.2013. But in the affidavit, it is stated that the industrial dispute may be treated as settled without prejudice to the right of the workman to have recourse to take appropriate steps to realize the monetary benefits based on her past service in the management bank as a temporary employee. It was objected to by the learned counsel for the management submitting that it cannot be termed as a full and final settlement and hence cannot be accepted to close the reference. At that time learned counsel for the workman has submitted that it is not necessary to have any adjudication about it since the appointment can be accepted as full and final settlement. A memo was filed to that effect on 26.03.2013. Therein it is expressly made clear that there is a full and final settlement and hence there is no necessity to have any adjudication of the dispute in this case. There is no reason to further proceed with this case and so the reference is closed.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the personal Assistant, transcribed and typed by her, corrected and passed by me on this the 27th day of March, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 962.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 84 का 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/46/2004-आई आर (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 962.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 84/2004 of the Cent. Govt. Indus, Tribunal-Cum-Labour Court No 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management *of* M/s. BCCL, and their workmen, received by the Central Government on 26/02/2014.

[No. L-20012/46/2004-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT: Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947

REFERENCE No. 84 OF 2004

PARTIES: : The Vice President,
Bihar Pradesh Colliery Mazdoor Congress,
Gandhi Road, Dhanbad.
Vs. The General Manager, Kustore Area of
M/s BCCL, Kustore, Dhanbad.

APPEARANCES:

On behalf of the workman/ Union	:	Mr. M.N. Rewani, Ld. Advocate
On behalf of the Management	:	Mr. U.N. Lal, Ld. Advocate
State	:	Jharkhand
Industry	:	Coal

Dated, Dhanbad, the 29th Jan., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/46/2004-IR(C-I) dt. 28.06.2004.

SCHEDULE

"Whether the action of the Management of Hurriladih Colliery, Kustore Area of M/s. BCCL, P.O. Kustore, Dist: Dhanbad in dismissing Sri Khagan Roy, Miner Loader from the services of the company *vide* order dated 10.11.2003 is just, fair and legal? If not, to what relief is the said workman entitled?.

2. Consequent upon the restoration of Misc Case No. 2/2006 to the present reference case as per the Order No. 18 dt. 9.2.2012 of the Tribunal, the reference Case which was earlier closed as No Dispute as per the Order No. 6 dt. 12.7.2005 again came into existence from proper hearing.

3. The case of sponsoring Bihar Pradesh Mazdoor Congress (B.P.M.C.), Gandhi road, Dhanbad form workman Khagan Ray is that he was a permanent employee as a Miner Loader (Pers No. 02939-536) of Hurriladih Colliery, Kustore Area of M/s. BCCL. On account of his seriously illness and treatment under Dr. A. Panja, he absented from his duty *w.e.f.* 9.8.1996. He was charge sheeted for it on 23.06.1997. Though it was not served upon him, he submitted his reply to it along with his treatment documents. Thereafter, the management neither conducted any enquiry nor permitted him to join his duty despite his several times efforts for it. When he lastly raised the Industrial Dispute Case No. 1/41/2003-ALC(R) though the Union concerned, the management issued him the Inquiry Notices dt. 1st and 21st March, 2003 respectively, setting up the inquiry against the workman after a lapse of six years. The enquiry proceedings was finally but illegally conducted by the Management on 10.6.2003 during the pendency of the Industrial dispute by taking his signature therein, as the workman had though not participated. The workman had informed of his absence through U.C.P. to the Management. After alleged enquiry, the Enquiry Officer submitted his enquiry report, alleging the workman guilty of the charges levelled against him; likewise the management without cogent reason dismissed him from his employment on and from 10.11.2003 under 26.1.1. of the Certified Standing Order of M/s. BCCL applicable only to habitual absentee, but he was not a habitual absentee. He being an illiterate was unaware of the rules and regulations of the Company.

4. The Union concerned in its rejoinder has categorically denied all the allegations of the O.P./ Management, stated the workman has no past record of his absentism. The entire enquiry matter was only the table task of the Management. The entire enquiry proceeding after six years of issuing alleged charges on 23.6.1997 was null and void; so the dismissal of the workman was illegal without awarding him any minor penalty.

5. Whereas specifically denying the allegations of the Union/workman, the contra case of O.P./Management is that workman Khagan Rai was a permanent employee working as a Miner Loader of the said colliery, but he was a habitual absentee. For his absentism from 9.8.96, he was chargesheeted under clause 26.1.1. of the Certified Standing Orders of the Company as per the chargesheet dt. 23.6.1997. No written explanation or reply was submitted by him. Mr. A.K. Jha, the Personnel Manager as the Enquiry Officer as per the Management's letter dt. 1/22.3.2003 of his appointment conducted the enquiry in accordance with the natural justice, as the workman had participated just as Sri Munilal the Labour Inspector as the Management Representative had presented in it, and he was given full opportunity for his defence. He had no complain of the enquiry. On examination of the past records of the workman, his attendance was 127, 21 and 17 days in the last three years 1994 to 1996 respectively. The Enquiry Officer submitted his enquiry report, holding the charges proved as levelled against the workman. The Disciplinary Authority applied his mind to it, and accordingly imposed upon him the punishment of dismissal as per the letter dt. 10.11.2003. The Industrial dispute was raised by the Union concerned as per its letter dt. 12.7.2003 by alleging the workman having been kept by the management away from his duty. The reply to it was submitted by the Management as per its letter dt. 10.11.2003. Since the workman was a habitual absentee, the action of the management in dismissing the workman from service is just, fair and quite reasonable; therefore, the workman is not entitled to any relief. Besides, the management sought an opportunity for leading evidence to prove the case in case the enquiry found to be unfair and improper.

FINDING WITH REASONS

6. In the instant case, on acceptance of the Union/ workman to the domestic enquiry as fair and proper as per his petition dt. 22.11.12, the Tribunal as per its Order No. 17 dt. 11.1.2013 held it fair and in accordance with the priniciple of natural justice, and accordingly the enquiry papers were marked as relevant Extts. for consideration. Then, it came up for hearing final argument of both parties on merits.

Mr. M.N. Rawani, Learned Counsel for the union/ workman concerned submits that due to his illness and treatment for it under Dr. A. Panja, the workman absented from 9.8.1996; through he had already submitted his documents, the management issued him the charge sheet on 28.6.1997 (Ext. M.1). Further it has been insistently submitted on his behalf that the managment after the chargesheet neither conduced and enquiry against the workman nor permitted him to join his duty despite his

efforts; at last, the Industrial dispute No. 1/41/2003 was filed on his behalf before the A.L.C., (C), and at the receipt of its notice, the management issued the enquiry notices on 1st & 3rd/21st March, 2003 (Ext. M-2 series) respectively after more than six years, and after the enquiry as per the enquiry proceedings (six sheets dt. 25.3.2003 to 10.6.03—Ext. M.3), the Enquiry Officer submitted his enquiry report (dt. 17.6.2003—Ext. M.4) against the workman, and the Management of Hurriladih Colliery as per its letter dt. 10.11.2003 (Ext. M.5) outright dismissed him which immediate from the service of the company for the alleged proved misconduct of absenteeism from 09.08.1996 under sub-clause 26.1.1. of the Certified Standing Orders of the Company, and the said dismissal punishment as awarded to the workman was not legal and proper in view of his reasonable absentism; moreover, his previous record of attendance has not been proved by the Management in the case.

Just contrary to it, Mr. U.N. Lal, the Learned Counsel for the O.P./Management has contended that in view of the proved charges of unauthorized absentism against the workman, the management by taking into account had rightly awarded him with his dismissal punishment for his said misconduct.

7. On the perusal and consideration of the materials on the case record, it appears the indisputable fact that the workman was Miner Loader of Hurriladih Colliery, Kustore Area of M/s BCCL, the present chargesheet of Enquiry Report (Extt. M.1) & 4 respectively nowhere refers to his such previous misconduct of absentism. At variance with the facts, I find the following facts:

(i) The workman in his oral statement had justified for his absentism due to falling sick and his treatment for it under Dr. A. Panja, though he had informed of it to the management through the U.C.P.

(ii) After more than five years of the chargesheet dt. 28.6.1997 related to his absentism *w.e.f.* 9.8.1996, the departmentary set in on 01.03.2003 unjustifiably against the workman who had earlier filed his I.D. Case No. 1/41/2003 before the A.L.C. At this point, I am of the view as held by the Hon'ble Apex Court in case of P.V. Mahadevan V.M.D., Tamil Nadu Housing Board, 2005 LLR(SN) 1010 (SC) that a charge memo as well as the disciplinary proceeding was initiated after 10 years (here after more than five years) are liable to be quashed since it will be very prejudicial to the delinquent employee. Similarly Hon'ble Delhi High Court held in the case of M.L. Tahiliani *Vs*. Delhi Development Authority, 2002 LLR 981 (Del. H.C.) that initiation of disciplinary action after four years of detection of misconduct will be quashed.

(iii) In view of the nature of alleged absentism, the punishment of dismissal to the workman appears to be too harsh, smacking vindictiveness and unfair, labour practice of the management. So the dismissal order is liable to be set aside.

In result, it is, in the terms of the reference, hereby responded, and accordingly.

ORDERED

That the Award be and the same is passed that the action of the management of Hurriladih Colliery, Kustore Area of M/s. BCCL, P.O. Kustore, Dist: Dhanbad, in dismissing Shri Khagan Roy, Miner Loader from the service of the Company *vide* order dt. 10.11.2003 is quite unjust, unfair and illegal. Hence, the workman is entitled to his reinstatement but without back wages. The O.P./ management is directed to implement the Award within one month from the receipt of its copy following its publication in the Gazette of India. Let the copies—one soft and one hard of the Award be sent to the Ministry of Labour, Government of India, New Delhi for needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 963.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 11 का 2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/196/2002-आई आर (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 963.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 26/02/2014.

[No. L-20012/196/2002-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT:

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO.11 OF 2003.

PARTIES : The Secretary,

Rastriya Colliery Workers Federation, Sijua Area No. 5., Banjora

No. 12, Dhanbad.

Vs. The General Manager,

Sijua Area No. 5 of M/s BCCL, PO: Sijua, Dhanbad.

APPEARANCES:

On behalf of the workman/Union	:	Mr. S.N. Goswami, Ld.Advocate
On behalf of the Management	:	Mr. D.K. Verma, Ld.Advocate
State	:	JHARKHAND Industry : Coal

Dated, Dhanbad, the 31th Jan., 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/196/2002/IR(C-I) dt. 10.12.2002

SCHEDULE

"Whether the action of the Management of Kanakanee Colliery, Sijua Area of M/s BCCL to dismiss the services of Late Ramjivan Ram w.e.f. 18.06.1998 vide order dated 27.06.1998 is proper and justified? If not, to what benefits Smt. Babita Devi, the dependent wife of the workman concerned (since deceased) is entitled?"

On receipt of the Order No.L-20012/196/2002-IR(C-I) dated 10.12.2002 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the reference Case No. 11 of 2003 was registered on 7th January, 2003 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

Both the parties made their appearances personally and through their Ld. Adovactes respectively filed their pleadings and their documents concerned.

2. The case of the sponsoring Rastriya Colliery Workers Federation, Sijua Area for workman Ramjivan Ram is that he was a permanent workman who had been working as a Miner/Loader since long at Kankanee Colliery of M/s BCCL there. He had reported for his duty on 21.7.1996, but after completing his duty, he did not return his home, since then, he had been missing. Since he was suffering from mental illness, he directly visited the Indira Gandhi Institute of Medical Science for his treatment beyond the knowledge of his family members. When they began to search for him through his friends and relatives after knowing it, his whereabouts could not be traced out. Unfortunately he died in the year 1998, and then his family members got knowledge of it. Consequently, an F.I.R. was lodged about his missing, as well as it was also informed of it to the Management several times, whereas the management was fully aware of it. Though his wife Babita Devi had duly reported of his husband missing, then she represented to the management for the employment under the provisions of NCWA, the Management informed her of her husband having been allegedly dismissed w.e.f. 18.6.1998 as per Order dt. 27.6.1998. Neither a charge sheet nor an enquiry notice was ever issued, so the plea of dismissal was a camouflage to deprive her of her employment as dependant of her late husband. The Management neither took cognizance of it nor provided her employment. Hence, the Industrial dispute raised before the Conciliation Officer ended in failure due to adamant attitude of the Management, resulting in the reference for an adjudication. Therefore, the action of the Managing in dismissal of her husband based on ex-parte enquiry was abinitio illegal, null and void, and injustified. Dismissal was very harsh and disproportionate to the alleged misconduct. Therefore, the dependent wife of the workman is entitled to her employment retrospectively with all arrears of wages and consequential benefits.

The Union concerned in its rejoinder categorically denied all the allegations of the O.P./Management, and stated that though the family members of the workman had already informed the management of all those facts, the management completed all the formality of the alleged enquiry biasedly.

3. On the other hand, the contra pleaded case of the O.P./Management with specific denials is that the present reference is unmaintainable, as workman Ramjivan Ram, though a permanent worker/Miner Loader of Kankanee Colliery, began to unauthorizedly absent from his duty w.e.f. 22.7.1996, so he was issued chargesheet No.91/96 dt. 4.11.1996 through Regd. Post for his misconduct under the

certified Standing Order of the Company. It was also published in the News Paper 'Janmat' on 20.6.1997. Despite these facts, the workman neither reported for duty nor replied to it nor participated in the enquiry. The Management appointed the Enquiry Officer to conduct the domestic enquiry concerning the chargesheet. After fairly and properly holding the enquiry, according to the principle of natural justice, the Enquiry Officer submitted his report, holding the workman guilty of the charge. Then the Disciplinary Authority dismissed the workman from the services of the company which was legal and justified. So Smt. Babita Devi, the wife of the workman is not entitled to any relief, as the Industrial dispute was raised by the Union on 3.4.2001 for her employment under clause 9.4.3 of the NCWA. It provides for no employment to the dependent of a dismissed employee. Besides, the wife of the workman as per her application dt. 21.7.1998 had informed the Management of her husband's missing since 22.7.1996. The death certificate dt. 30.4.1998 issued by Indira Gandhi Institute of Medical Science, and other Death Certificate dt. 28.5.1998 produced by the Union concerned in the Conciliation proceeding were palpably forged.

4. The O.P./Management in its rejoinder by categorically denying the allegations of the Union has stated that the story of the workman's sickness was a concoction for the case; no Union could disclose the date of knowledge about the workman's death. Moreover the chargesheet and all the notices were sent by the Management on his permanent home address as also published on the daily as noted above. The dismissal of the workman was legal and justified.

FINDING WITH REASONS

5. As the reference relates to dismissal of the workman, so firstly the Management and then the Union produced their own evidences based on their pleadings at the preliminary issue as to the fairness and vice versa of the domestic enquiry. On consideration of the evidence oral and documentary both the parties, the Tribunal as per its Order No. 31 dt. 20.07.12 held the domestic enquiry though ex-parte yet fair, proper and adopting the principle of natural justice. Hence, the it came up for hearing the final argument of both the parties on merits.

Mr. S.N. Goswami, the Ld. Advocate for the Union Representative/Petitioner Babita Devi the dependent wife of late workman Ramjivan Ram as per his written argument, has submitted that Late workman Ramjivan Ram as a permanent employee had been working as SDL Operator at Kankanee Colliery, Sijua No.-V of M/s BCCL since long according to the photocopy of the Service Record (Ext. W.2). The late workman had lastly performed his duty on 21.7.1995 since then he had not returned on his duty, and absented from his duty thereafter. The matter of missing of the workman was all along reported by one Rita Devi and her dauthter (petitioner Babita Devi through their petitions dt. 23/24.7.1996, 14.5.1997, 24.6.1997, 26-9-97 and 25.3.1998 (Extt. W.1 series) to the Management for her claim. It is also submitted on her behalf that when the petitioner got the knowledge through reliable sources that her husband died on 30.04.1998 at Indira Gandhi Institute of Medical Science, Shekapura, Patna (the photocopy of his death Certificate dt. nil-Ext. W.3), as he was mentally disturbed ;thereafter the petitioner filed her aforesaid representation for her employment under clause 9.4.2. of NCWA-V, but her representation was rejected on the ground that her deceased husband was already dismissed w.e.f. 18.6.1998 as per the Management's letter 27.6./22.7.1998 (Ext. M.8). After alleged domestic enquiry, it is also submiteted on her behalf that the dismissal of the deceased workman was without any proper enquiry, as such she is entitled to employment under the said provision.

On the other hand Mr. D.K. Verma, the Ld. Counsel for the O.P./Management submitted in the term of reference that the sponsoring union has no locus standi to raise the I.D. of dead workman, because he was already dismissed by the Management in the year 1998, after holding due and proper enquiry for his misconduct of absentism, so his dismissal was quite justified and proper. It is also contended for the management no representative case lies during the life time of the workman concerned who is now Dead, as such petitioner Babita Devi is not entitled to any relief.

6. On perusal and due consideration of the materials available on the case record, it appears no dispute as to the fact that the workman was the employee of the Management as Miner/Loader of the Kankanee Colliery of M/s BCCL as per his Service Excerpt (its photocopy-Ext. W.2), which bears his dates of birth and Appointment on 09.05.1964 and 15.02.1988 respectively as evident from his Absentee Report of the Project Officer dt. 16.4.1998—Ext. M.6/1). Besides, the other facts are as under:

(i) The fact of tracelessness or absentism of the workman from his duty since 22.7.1996 is also beyond any dispute.

(ii) Despite the Notices of the enquiry (Ext. M.1 and 3 Series) issued to the workmen even on his permanent house address and its publication in the daily Janmant dt. 11.6.97 (Ext. M.4) series) for the domestic enquiry into the charge sheet dt. 4.11.1996 (Ext. M.2), his non-appearance resulted in the enquiry proceeding as per its proceeding (Ext. M.6 though ex-parte, yet validily. The enquiry proceeding clearly reveals that petitioner Babita Devi is the wife of the workman who had along represented (her applications between 23.6.97 and 26.8.97—Extt. M.5 Series) for the claim for benefits of money/employment on the ground of the tracelessness of her husband. Meanwhile, on the Enquiry Report dt. 30.7.1997 of the Enquiry Officer

concerned following its approval of the Manager on 8.8.97 (Ext. M.7), the workman was dismissed from the service of the Management w.e.f. 18.6.1998 as per its letter dt. 27.6./22.7.1998 (Ext. M.8).

(iii) The Death Certificate dt. 30.4.1998 of the workman Ramjivan Ram (Ext. W.3) the petitioner had got on the same date from the I.G.I.M.S., Shekhapura, Patna-14, after knowing through her reliable serices about the death of her traceless husband on that date. It evidently indicates the death of the traceless workman to have taken place at I.G.I.M.S (Indira Gandhi Institute of Medical Sciences), Patna, prior to his alleged dismissal as per the Management's letter dt. 27.6./22.7.1998 w.e.f. 18.6.1998 (Ext. M.8), which is itself retrospectively. The dismissal is infructuous.

In view of the aforesaid aspects, it is hereby responded and accordingly:

ORDERED

That the action of the Management of Kanakanee Colliery, Sijua Area of M/s BCCL to dismiss the services of Late Ramjivan Ram w.e.f. 18.6.1998 vide order dt. 27.6.1998 is quite improper and unjustified. Hence, Smt. Babita Devi, dependant wife of the workman concerned (since deceased) is entitled to her employment under clause 9.5.0. read with clause 9.3.2. of the N.C.W.A-VI with the Gratuity, C.M.P.F. and the relevant monetary benefits as the dependent wife of deceased workman.

O.P./Management concerned is directed to employment the Award after the receipt of its copy following its publication in the Gazette of India by the Government of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 964.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/02/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/114/2005-आई आर (सी एम-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 28/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. CCL, and their workman, which was received by the Central Government on 26/02/2014.

[No. L-20012/114/2005-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT:

SHRI KISHORI RAM,

Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 28 OF 2006.

PARTIES : Shri Sarlu Mahato,
Vill: Dulmi, PO: Harhand Kandar, Via Ramgarh Cantt., Hazaribagh

Vs. The Project Officer, Kuju Colliery of M/s CCL, Kuju, Hazaribagh

APPEARANCES:

On behalf of the workman/Union : Mr. U.N. Lal, Ld. Advocate

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 29th Jan., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under See. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/114/2005-IR(CM-I) dt. 01.06.2006

SCHEDULE

"Whether the action of the Management of Kuju Colliery of M/s. CCL to terminate Shri Sarlu Mahato, PRW from the service of the company w.e.f. 14.1.2005 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the Order No. L-20012/114/2005-IR (CM-I) dated 01.06.2006 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the reference Case No. 28 of 2006 was registered on 26th June, 2006 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned

directing them to appear in the Court on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

Both the parties made their appearances through their respective Counsels and filed their pleadings and photocopies documents. Since the workman accepted the fairness of the domestic enquiry, it directly came up for hearing final arguments on merits as the photocopies of the documents of the Management made available on the case record.

2. The case of workman Sarlu Mahato is that he was PR worker was a permanent employee of Kuju Colliery of M/s. CCL. He is illiterate. Taking advantage of his illiteracy, the O.P./Management arbitrarily but illegally terminated him from the service of company as per its order dt. 14.1.2005 without any reasonable enquiry. He was never served with any chargesheet. He was suffering from T.B. He was referred to the Central Hospital Naisarai for proper treatment on 19.09.2002 as also stated by Sr. Medical Officer Dr. S. Kumar before in the enquiry on 15.7.2004, affirming his continued treatment. The enquiry report also referred to the Doctor's remarks about his sickness and fitness. At recovery, the workman submitted the copy of his treatment for his duty. He was hospitalized from 13.12.2002 to 26.12.2002 and was declared fit for duty on 27.12.2002 after 10 days rest. Mr. R.P. Verma, the Attendance Clerk in course of the enquiry produced from "C" Register which showed his absence from 8.9.2002 and his sick leave duly recorded therein, authenticated his remaining on Sick leave from that date. The workman after being fit had reported for his duty. Despite any proof of any charge, he was served with the enquiry report. The action of the Management in terminating his service was not only unjustified but also against the principle of natural justice, as the workman had himself absented for his illness. His termination was too harsh and disproportionate to his alleged absence.

3. The workman in his rejoinder categorically denied the allegations of the O.P./Management justifying the maintainability of the reference. He was not a habitual absentee. There was not any misconduct on his part. The O.P./Management was biased, so he was unreasonably punished with dismissal. The similarly the enquiry was not fairly and properly conducted by the Enquiry Officer.

4. Whereas challenging the reference as unmaintainable in law and facts, the case of the O.P./ Management with specific denials is that the workman was a habitual absentee as used to be several times unauthorizedly in the year 1999 twice chargesheeted and after due domestic enquiries both times, the workman was sympathetically allowed to resume his duty on 29.1.1999 and 16.11.2002 lastly with a strict warning. Despite the two opportunities for his improvement, the workman could not improve to himself, and started to absent from his duty unauthorizedly from 8.9.2002. At his chargesheet for his unauthorized absence from his duty, the management issued him the charge sheet for his misconduct of habitual absentism under clause 26(24) and 26(29) of the Certified Standing Orders. He also replied to the chargesheet. On finding his rely unsatisfactory, the management appointed the Enquiry Officer to conduct domestic enquiry. After holding due enquiry in accordance with the principle of natural justice, the Enquiry Officer submitted his enquiry report, holding him guilty of the charges levelled against the workman. The second Show Cause with enquiry report was issued to the workman. He submitted his representation to the second Show Cause. On consideration of the enquiry report and the representation of the workman, the Disciplinary Authority decided to terminate the workman from the service on the ground of the proved misconduct against him. So the action of the Management in dismissing the workman is legal and justified. The dismissal of the workman is quite proportionate to his misconduct of habitual absentism. The O.P./Management has also urged for a permission for adducing evidence afresh in case the enquiry found as unfair.

FINDING WITH REASONS

5. In the instant case, on acceptance of the workman as per his petition for the fairness of the domestic enquiry, the Tribunal as per its order No. 13 dt. 10.10.2011 held the domestic enquiry as fair and proper and in accordance with the principle of natural justice. It resulted in hearing the final argument of both the parties on merits.

Mr. U.N. Lal, the Learned Counsel for the workman submits that in fact the workman, the P.R. Worker and permanent employee of Kuju Colliery of B.C.C.L. was a T.B. patient, so he was referred to the Central Hospital, Naisarai, for proper treatment on 19.9.2002 as admittedly stated by the Senior Medical Officer Dr. S. Kumar before the Enquiry Officer on 15.7.2004. Further it has been submitted on his behalf that the workman got treatment as an out-door patient, and was also hospitalized in the Hospital on 13.12.2002, and remained under treatment there till 26.12.2002; thereafter having been declared fit for duty, he submitted the treatment papers to the Management. besides the Management witness R.P. Verma affirmed about the workman on sick leave from 8.9.2002 as noted in the Attendance Register (Form-C). Though the charges of absentism as levelled against the workman could not be proved, he was Management for it was is quite harsh punishment for him.

6. Whereas the contention of Mr. D.K. Verma, the Learned Advocate for the O.P./Management is that the enquiry has once been found fair; apart from several warnings, the last one was also given to the workman for habitual absentism; so he was awarded with the punishment

of his termination from the service of the Company for his misconduct of habitual absentism, and the said punishment by the Management was appropriate to the nature of his such misconduct.

7. On perusal and consideration of the materials on the case record, I find that despite satisfactory and reasonable reasons for his alleged absentism which went unconsidered by the Management, apart from being inadequate evidence for it, the dismissal of the workman for his service appears to be too harsh, and quite disproportionate to the alleged absentism. It is liable to be set aside for ends of proper justice to the workman. The dismissal of an employee will be illegal if also his explanation has not been considered as held in the case of K.V. Panduranga Rao Vs. Karnataka Dairy Development Corporation (1997) 91 F.J.R. 1234. Likewise, the dismisal of an employee will be quashed in the absence of adequate evidence, and he will be entitled to reinstatement as held in the case of P.K. Jain Vs. Commissioner, Municipal Corp. of Delhi 1999 LLR 951 (Del. H.C.).

In result, it is hereby responded and accordingly.

ORDERED

That the Award be and the same is passed that the action of the Management of Kuju Colliery of M/s CCL to terminate Shri Sarlu Mahato PRW from the service of Company w.e.f. 14.1.2005 is quite illegal and unjustified. Hence, the workman is entitled to his reinstatement with 50% back wages and concomitant benefits. The O.P./ Management is directed to implement the Award within one month from the date of its receipt, following its publication in the Gazette of India by the Government of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 26 फरवरी, 2014

का॰आ॰ 965.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 43/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.02.2014 को प्राप्त हुआ था।

[सं॰ एल-20012/285/1996-आई आर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 26th February, 2014

S.O. 965.—In pursurance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 43/1998 of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/S BCCL, and their workmen, received by the Central Government on 26/02/2014.

[No. L-20012/285/1996-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE NO. 43 OF 1998

PARTIES : The Secretary,

Bihar Colliery Kamgar Union, Hirapur, Dhanbad

Vs. General Manager, Moonidih Area, of M/s

BCCL Moonidih, Dhanbad,

APPEARANCES :

On behalf of the Workman/Union : None

On behalf of the Management : Mr. U.N. Lal
Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, the 21st Jan., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-120012/285/96-IR(C-I) dt. 20.02.1998

SCHEDULE

"Whether the action of the management of Moonidih Washery of M/s BCCL in dismissing Shri P.K. Dhan Fitter/Operator, *w.e.f.*21.07.1985 is justified? If not, at what relief is the concerned workman entitled to.

On receipt of the Order No L-20012/285/96-IR (C-I) dated 20.02.1998 of the above mentioned Reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference Case No. 43 of 1998 was registered on 16.03.1998. And accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned directing them to

appear in the Court on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order notices by the Registered Post were sent to the parties concerned.

Both the parties made their appearance through their respective Counsels and filed their pleadings and documents.

2. The case of sponsoring Union Bihar Colliery Kamgar Union workman P.K. Dhar is that he as a permanent had been working at Moonidih Washery, but the Management through unauthorized person issued him a false and frivolous charge-sheet for his absence for duty, though his absence was for a reasonable cause. Though he had submitted his satisfactory explanation for it, till then the management constituted an invalid and irregular department enquiry through a biased Enquiry Officer who completed the enquiry in utter violation of the principles of natural justice. Even in the invalid *ex-parte* enquiry, the charge levelled against was not proved, yet he was dismissed by an authorized person. Despite his representations several times against his illegal and arbitrary dismissal, but it went in effective. At last the Industrial Dispute raised by the Union before the A.L.C.(C), Dhanbad due to the failure in conciliation owing to adamant attitude to the management resulted in the reference for an adjudication. So the action of the Management in dismissing the workman was illegal and unjstified.

The Union in its rejoinder has specifically denied all the allegations of the O.P./Management, stating that the delay in raising the dispute was due to false assurance of the Management. Neither the workman got any notice of enquiry, not it was issued to him by a registered post. He was hastily dismissed from service by completing only formalities.

3. Whereas with categorical denials, the pleaded case of the O.P./ Management is that the present reference being barred by limitation is unmaintainable, as the workman was dismissed from his service *w.e.f.,* 21.07.1985, but the Union raised the dispute in the year 1994. It is inordinate delay. Workman P.K. Dhan was a habitual absentee from his duty without permission. In spite of giving him serval opportunities to mend his such habit by issuing him warning letters and usual undertaking disciplinary action against him time to time, he began to unauthorisedly absent for more than 10 days from his duty *w.e.f.* 20.06.1984, for which he was chargesheted for his misconduct under the provisions of the Standing Order of the Company applicable to its establishment neither the workman replied to it nor he accounted for his unauthorized absence. Sri D.B. Singh, Dy. Manager (Pers) as the Enquiry Officer and Sr P.M. Prasad as Management Representative (MR) were appointed for the departmental enquiry. Despite the notice of enquiry even by Regs. Post to him at his permanent home address and its non-copy displayed on the notice board, the non-appearance of the workman resulted in the *ex-parte* proceeding on 10.05.1985 due to his non-cooperation, then after the enquiry, the Enquiry Officer submitted his enquiry report, holding him guilty of the charges levelled against him. On consideration of the enquiry report, enquiry proceeding and other relevant papers, the Management as per its decision dismissed the workman from his service as per its letter dt. 21.7.1985 after abtaineing its approval from the General Manager of the Area. So the action of the Management for dismissal of the workman was legal, bonafide and justified. He is not entitled to any relief.

The Management in its rejoinder categorically denying the allegations of the workman has stated that the workman frequently unauthorizedly absented from his duty in all the years.

FINDING WITH REASONS

4. In the instant reference, at the failure of the Management in examination of any of its witnesses at preliminary point in spite of ample opportunity, the Trinunal as per its Order No. 38 dt. 13.06.2005 declared the domestic enquiry unfair and improper.

Consequently, the Management examined its MWI Ajit Kumar Singh, Sr. Manager, Moonidih Washery on merits, but no wihness on merits on behalf of the workman could be produced or examined.

The statement of MWI Ajit Kumar Singh, the Senior Manager (Pers), Moonidih Washery, on merits affirmed the facts of the O.P./Management that workman. K. Dhan was appointed as Fitter/Operator on 15.10.1982 at Moonidih Coal Washery of M/s BCCL as evident from the certified copy of his Form B Register (Ext. M.1) But he began to absent from 20.06.1984 just as previously he used to do habitually unauthorized absentisms, he was chargesheeted (Ext. M. 2), but he did not reply to it. Sri D.B. Singh, the Manager (Pers.) was appointed as the Enquiry Officer as per the Management's letter dt. 01.03.1985 for holding the domestic enquiry into the charges against the workman. The workman was given the notices by Regd. Posts dtt. 18.4.85 and 30.04.1985 (Extt. 3/1 and 3/2). Despite ample opportunity, the non appearance of the workman in course of the enquiry resulted in its proceeding *ex-parte.* After examinatiion of Sri Jagdish Prasad, Bill Clerk and Sri Kirti Kumar, the Office Superintendent, the Enquiry Officer completed the enquiry as per the proceeding (Ext. M 3/3), and submitted his enquiry report (Ext. M.3/4) and thereafter the workman was dismissed from his service as per the dismissal Order dt. 21.7.1985 (Ext. M3/5). He was given full opportunity for defence in accordance with the principle of natural justice. There was no complain whatsoever from the side of the workman in course of the domestic enquiry. So the dismissal order to the Management against the workman was quite legally justified and proper. The

Management witness to the court on query responded that the chargesheet do not refer to the previous absentism of the workman.

In the light of the aforesaid fact, Mr. U.N. Lal, Leaned Counsel for the O.P./Management has submitted that on holding the domestic enquiry quite fairly and properly, the Enquiry Officer submitted his Enquiry report based on findings and documents, and consequent upon the application of mind to it, the Disciplinary authority decided to dismiss the workman on the proof of the misconduct under 15 'N' & "D" of the Standing Order of the Company for his unauthorized absentism against him, his dismissal by the Management was justified, so he deserves not any relief.

On perusal and consideration of the aforesaid facts and documents, it stands quite obvious that the workman had been a habitual absentee of unauthorized absentism *w.e.f.* 20.06.84 as in his previous years of services in the years 1982-83 as evident from the Enquiry report (Ext. M.3/4). In the circumstances I am of the opinion as also held in the case of P.M. Raju Vs. P.O. Labour Court & Other, Madurai (2001) LLN 903 that the dismissal of an employee habitually absenting will be justified. The workman who is in the habit of unauthroized adsentism appears to be highly unaccountable to his job under the Management. In nature of the regular gross misconduct of the workman his dismissal from his service with immediate effect in the year 1985 appears to be not harsh, rather quite proportionate.

In result, in the terms of the reference, it is responded and accordingly, hereby

ORDERD

The action of the Management of Moonidih Washerey of M/s BCCL in dismissing Sri P.K. Dhan, fitter/Operator *w.e.f.* 21.07.85 is quite justified. So he is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 27 फरवरी, 2014

का॰आ॰ 966.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 929/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.02.2014 को प्राप्त हुआ था।

[सं॰ एल-22012/428/1999-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 27th February, 2014

S.O. 966.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 929/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27.02.2014.

[No. L-22012/428/1999-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 929/2005

Registered on 14.9.2005

Sh. Lakhbir Singh, Tek Chand Sharma, 25, Sant Nagar, Civil Lines, Ludhiana ...Petitioner

Versus

The District Manager, Food Corportion of India, 804, Gurdev Nagar, Ludhiana. ...Respondent

APPEARANCES

For the Workman : Sh. Tek Chand Sharma, Adv.

For the Management : Sh. Ravi Kant Sharma, Adv.

AWARD

(Passed on 04.02.2014)

Central Government vide Notification No. L-22012/428/99-IR(CM-II) dated 29.2.2000/7.3.2000, by exercising its pwoers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal—

> "Whether the action of the management of Food Corporation of India, Ludhiana in terminating the services of Sh. Lakhbir Singh S/o Sh. Sadhu Singh is legal and justified ? If not, to what relief the concernd workman is entitled to ?"

In response to the notice the workman appeared and submitted statement of claim pleading that he joined the respondent management as Watchman on 89 days basis and worked from 6.3.1993 to April 1996 continuously. He was employed against the work which was of permanent nature and was performing the same functions as performed by the regular employee and worked under the control of the officials of the respondent management. He was paid wages every month which was calculated on the basis of regular statement of attendance. That his services were illegally terminated and in violation of the provisions of the Act.

Respondent management filed written statement pleading that during procurement season, foodgrains are

purchased and are stored in makeshift godowns for a short period and for that purpose the management engages the services of private firm/companies to provide watchman/ security guards who issue appointment letters and pay the wages and also deposit the Provident Fund. That M/s. Aman Security and Detective Agency was engaged in the year 1995-96 for a short term of 60 days and the workman may have been engaged by this said firm. He was not an employee of the FCI and no relationship of employer and employee exists between the parties.

In support of its case the workman appeared in the witness box and filed his affidavit supporting his case as set out in the claim petition. He has further deposed that M/s Aman Security and Detective Agency used to send intimation to the reponsdent about the working of the deponent and placed on record letters Annexure A to Annexure M which are of different dates and years. That the payment was made by the respondent. That he was an employee of the respondent management and his services were illegally terminated.

On the other hand, respondent has examined Sandeep Gosain who filed his affidavit reiterating the case as set out in the written statement.

I have heard Sh. Tek Chand Sharma, counsel for the workman and Sh. Ravi Kant Sharma, counsel for the management.

Learned counsel for the workman carried me through the affidavit of workman and submitted that he continuously served with the respondent management for four years and his services have been terminated without complying with the provisions of the Act and therefore his termination is illegal.

I have considered the contention of the learned counsel.

The workman has set up a definite case that he joined the service of the respondent management of 89 day basis and worked from 6.3.1993 to April 1996. Respondent management in its written statement took the plea that M/s Aman Security and Detective Agency was given contract for providing security guards for makeshift godowns for the protection and security of foodgrains and the workman may have been employed by the said agency. The workman has denied this fact in its rejoinder and did not admit in the pleadings that he was employed by the said agency but while appearing in the witness box he himself has placed on file Annexure A and Annexure M, which are letters sent by M/s Aman Security and Detectives to the respondent management, showing that the workman was actually engaged by the said agency on different dates. Thus the documents relied upon by the workman shows that he was not engaged by the FCI but by M/s Aman Security and Detectives and being so, he cannot claim that he was an employee of the FCI.

Reliance was also placed on Annexure A1 to A4 to submit that the salary was paid by the respondent management but the perusal of the said documents shows that only certificate was issued by the relevant officer for engaging the security guards for particular months as per the record maintained by Aman Security Detectives. These documents do not show at all that the workman was actually employed by the respondent management. The workman while appearing in the witness box has admitted in his cross-examination that he was directly engaged by the respondent management but no appointment letter was given to him. It cannot be said that the respondent management engaged him without issuance of any appointment letter. The workman claims that he was paid wages by the Manager of the FCI but no record has been produced to show that he was actually paid any salary by the respondent management. Thus taking all these circumstances into consideration, it is held that workman has failed to prove that he was an employee of the respondent management and his services were terminated by it and he is not entitled to any relief and accordingly the reference is answered against the workman.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 27 फरवरी, 2014

का॰आ॰ 967.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰-2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 107/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/02/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/352/2003-आई आर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi the 27th February, 2014

S.O. 967.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award Ref. 107/2005 of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 27.02.2014.

[No. L-22012/352/2003-IR (CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT:— Shri Kewal Krishan, Presiding Officer

Case No. I.D. No. 107/2005

Registered on 19.7.2005

The Secretary, FCI Samooh Palledar Union, Depot Mansa (Distt. Mansa), Punjab. ...Petitioner

Versus

The Senior Regional Manager, Food Corporation of India, SCO 356-359, Sector 34A, Chandigarh. ...Respondents

APPEARANCES

For the workman : Sh. M.S. Uppal, Adv.

For the Management : Sh. Santokh Singh, Adv.

AWARD

(Passed on 5.2.2014)

Central Government *vide* Notification No. L-22012/352/2003 IR(CM-II) Dated 8.6.2005, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Food Corporation of India in not absorbing contract labour workers (list enclosed) in DPS as per the guidelines of Ishwari Prasad Committee is legal and justified? If not, to what relief they are entitled?

Shorn of unnecessary details, the relevant facts for the present controversies are that Food Corporation of India has 140 depots in Punjab for the storage of foodgrains. It engages labour for loading, unloading and handling storage and transit of foodgrains. Initially the labour was used to be engaged through contractors. In 1992-93, the contract labour system was abolished in 8 depots and the labour was absorbed as a permanent labour of the FCI. When the matter was agitated, a memorandum of undertaking was arrived at the Committee was constituted and direct payment system, as per the guidelines of Ishwari Prashad Committee in all the depots, who laid certain conditions for verification of workers and also to assess the requirement of labour, was introduced.

It is the case of the workers-Union that there were 172 workers engaged by the contractor in Mansa depot of FCI before the implementation of the report of Ishwari Prashad Committee who were working for the last 15-20 years. They were got medically checked. There was EPF Account Numbers of 144 workers and Identity Cards were issued to 144 workers who were working as handling labour and the ancillary labours were not issued Identity Card/ EPF Account Number. However 172 workers used to mark attendance in the register. It is further mentioned in the statement of claim that 28 workers were working as ancillary labour in the Mansa Depot. It is further pleaded that on the introduction of direct payment system, only 97 workers were selected as handling labour and 18 workers as ancillary workers *w.e.f.* 1.4.1997 vide order dated 16/18.10.1997 and remaining 57 workers were rendered unemployed on account of the wrong assessment of the strength of labour. That the work of loading and unloading at Rail Head was not taken into account. That the FCI Officers/Officials under whose supervision the work is to be performed at Mansa Depot have recommended for more labour on need basis and even wrote a letter dated 19.11.1997 and 30.5.2000 for approval to induct 144 handling labour and 28 ancillary labour and this number of workers is needed as per the formula described by the Ishwari Prashad Committee. That the action of the management in not covering the remaining 57 workers under the scheme is illegal, as they have been continuously working at Mansa Depot and are required to be absorbed as per the report of the Committee. That the said persons be inducted as labourers under the direct payment system.

The Corporation in its written statement denied that 172 workers were engaged by the contractor Gurpal Singh and pleaded that only 144 workers were with the contractor whose EPF etc. was deposited and out of the said workers 97 were selected as handling labour and 18 were selected as ancillary workers. That the labour was inducted as per the formula and the guidelines of Ishwari Prashad Committee and the other workers have no claim and their claim be dismissed.

In support of the case of the worker-union, Sh. Kashmira Singh appeared in the witness box as Secretary of the Union and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management has examined Sh. C.P. Saharan who filed his affidavit reiterating the case of the respondents as set up in the written statement.

Learned counsel for both the parties made written submissions which have been persued by me.

It may be added that the written submissions are on the lines of the pleadings of the parties. As stated above, the case of the Union is that there was 172 workes *i.e.* 142 workers working as handling labour and 28 as ancillary labour and all were required to be absorbed under the direct payment system on the basis of Ishwari Prashad Committee. It may be added that none of the workers who were employed by the contractor and worked as a labour at Mansa Depot prior to the implementation of the said scheme has appeared in the witness box to prove their case that they were actually working as a labourers at the Mansa Depot prior to the implementation of the scheme and were covered as such under the said scheme. It is not denied that the labour was used to be provided by the contractor and it is the case of the worker-Union that workers were working under Gurpal Singh contractor. Again neither Gurpal Singh has been examined nor his record produced to show that he actually employed 172 workers for the Mansa Depot. Thus it cannot be said, in the absence of the

above said evidence, simply on the statement of Kashmira Singh, who is the Secretary of the Union, to hold that there were 172 workers working as Mansa Depot prior to the implementation of the direct payment system scheme.

It may be added that in the reference, a list of workers was attached showing that there were 88 workers who allegedly claim the relief. But in the statement of claim it is alleged that 57 workers were left and are required to be covered under the scheme. Thus it is not clear which of the workers out of the 88 workers as find mention in the list attached with the reference were actually working at the Mansa Depot at the relevant time.

Again there is no evidence that any of the workers which was left was actually entitled to be covered under the scheme. If the officers of the respondent management has written certain letters asking the higher authorities to provide more labour to carry out the work at Mansa Depot, it does not mean that the persons, as find mention in the list attached with the reference, were working with the contractor at the relevant time and are entitled to be absorbed under the direct payment system scheme.

Thus the workers have failed to establish their claim by leading any cogent evidence on the file and therefore the reference is, accordingly, decided against the workers-union. Let hard and soft copy of the award be sent to the Cental Government for further necessary action.

KEWAL KRISHAN, Presiding Officer.

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 968.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जे सकाई शिपिंग एण्ड एवियेशन सर्विस प्रा॰ लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-2-2014 को प्राप्त हुआ था।

[सं॰ एल-11012/10/2013-आई आर (सीएम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No 34/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of M/s. J Sky Shipping & Aviation Services Pvt. Ltd., and their workman, received by the Central Government on 28-2-2014.

[No. L-11012/10/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Friday the 25th day of October, 2013/03rd Kartika, 1935)

ID 34/2013

Union : The General Secretary
Kerala Civil Aviation Workers Congress (INTUC)
VP Marakkar Smaraka Mandiram
Vanchiyoor, Trivandrum
Kerala-695001

Management : The Managing Director
M/s. J Sky Shipping & Aviation Services Pvt. Ltd.
(Blue Sky Port Services Private Ltd.),
Regiton Bldg.
Airport Road, Valiyathura, Trivandrum
Kerala-695008

By Adv M/s Suman Chakravarthy

This case coming up for final hearing on 24.10.2013 and this Tribunal-cum-Labour Court on 25.10.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour by its Order No-L-11012/10/2013-IR (CM-I) dated 21.06.2013 referred this industrial dispute to this tribunal for adjudication.

2. The dispute is:

"Whether the action of the employer *i.e.* M/s. J. Sky Shipping & Aviation Services Pvt. Ltd. (Blue Sky Port Services Private Ltd.), Vallayathura, Trivandrum in terminating the services of Shri Santhosh Kumar, Trolley Retriever from 02.11.2012 at Trivandrum International Airport is legal and justified? To what relief the concerned workman is entitled to?"

3. After receipt of summons union did not enter appearance. Management entered appearance. As the union failed to appear and file claim statement in spite of several adjournments it was set *ex-parte.* Management filed affidavit stating that the reference is to be proceeded with *ex-parte* against the union and an award is to be passed.

4. As there is no pleading or any evidence to satisfy that the termination of the workman is not legal it can only be held that action of the management in terminating his service *w.e.f.* 02.11.2012 is justifiable.

5. In the result an award is passed finding that the action of the management in terminating the services of the workman as trolley retriever w.e.f. 02.11.2012 is legal and justified and hence he is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of October, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 969.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जे सकाई शिपिंग एण्ड एवियेशन सर्विस प्रा॰ लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-2-2014 को प्राप्त हुआ था।

[सं॰ एल-11012/9/2013-आई आर (सीएम-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No 35/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of M/s. J. Sky Shipping & Aviation Services Pvt. Ltd., and their workmen, received by the Central Government on 28-2-2014.

[No. L-11012/9/2013-IR (CM-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Friday the 25th day of October, 2013)

ID 35/2013

Union : The General Secretary
Kerala Civil Aviation Workers Congress (INTUC)
VP Marakkar Smaraka Mandiram
Vanchiyoor, Trivandrum
Kerala-695001

Management : The Managing Director
M/s. J Sky Shipping & Aviation Services Pvt. Ltd.
(Blue Sky Port Services Private Ltd.),
Regiton Bldg.
Airport Road, Valiyathura, Trivandrum
Kerala-695008

By Adv M/s. Suman Chakravarthy

This case coming up for final hearing on 24.10.2013 and this Tribunal-cum-Labour Court on 25.10.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour by its Order No. L-11012/9/2013-IR (CM-I) dated 21.06.2013 referred this industrial dispute to this tribunal for adjudication.

2. The dispute is:

"Whether the action of the employer *i.e.* M/s. J. Sky Shipping & Aviation Services Pvt. Ltd. (Blue Sky Port Services Private Ltd.), Vallayathura, Trivandrum in terminating the services of Shri Pradeep, ex-Trolley Retriever from 02.11.2012 at Trivandrum International Airport is legal and justified? To what relief the concerned workman is entitled to?"

3. After receipt of summons union did not enter appearance. Management entered appearance. As the union failed to appear and file claim statement in spite of several adjournments it was set ex-parte. Management filed affidavit stating that an award is to be passed by proceeding with the reference ex-parte against the union.

4. As there is no pleading or any evidence to satisfy that the termination of the workman is not legal it can only be held that the action of the management in terminating his service is justifiable.

5. In the result an award is passed finding that the action of the management in terminating the services of the workman as trolley retriever w.e.f. 02.11.2012 is legal and justified and hence he is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of October, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 970.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सी एस आई ओ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में दिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 624/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/2/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/208/2002-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 28th February, 2014

S.O. 970.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 624/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Scientific Instruments Organisation, and their workman, received by the Central Government on 28/2/2014.

[No. L-42012/208/2002-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 624/2005

Registered on 24.8.2005

Sh. Kushaldeep Singh, House No. 1459/12,
Sector 29-B, Chandigarh

...Petitioner

Versus

The Director, Central Scientific Instrument
Organization, Sector 30, Chandigarh

...Respondent

APPEARANCES:

For the workman	Sh. R.P. Rana, Adv.
For the Management	Sh. I.S. Sidhu, Adv.

AWARD

(Passed on 3.2.2014)

Central Government vide Notification No. L-42012/208/2002-IR(CM-II) Dated 5.3.2003, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of CSIO in terminating the services of Sh. Kushaldeep Singh, Security Guard w.e.f. 31.1.2001 is legal and justified? If not, to what relief he is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he is an Ex-Serviceman and the respondent-management sent a requisition to Zila Sainik Board for sponsoring his appointment as Security Guard in respondent-management's campus. In response to the letter dated 25.1.2000 of the management, he was interviewed by the Security Committee and an appointment letter dated 23.3.2000 was issued to him as Security Guard at the campus against salary of Rs. 2408 per month. He worked up to January 2001 when his services were suddently terminated orally and without issuing any notice and payment of any compensation. He has completed more than 240 days of service and was entitled to the grant of temporary status in pursuance of the scheme issued in 1993 by the Government of India. His termination being in violations of Section 25F, 25F and 25H of the Act, the management be directed to reinstate him in service with full back wages.

Respondent-management filed written reply admitting that the workman was engaged as a Security Guard w.e.f. 1.3.2000 vide appointment letter dated 23.3.2000 and in the appointment letter, there was a stipulation that the Director, CSIO, reserve the right to relieve anyone from the Security arrangement without assigning any reason; and in view of this Clause, discontinuing the services of the workman was valid and it cannot be said that he was retrenched. That the workman is not covered for the grant of temporary status.

In support of its case the workman appeared in the witness-box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand, the management examined Sh. A.K. Mukherjee who filed his affidavit on the lines of the stand taken by the respondent management in the written statement.

Management was proceeded ex parte vide order dated 16.12.2010. However, later on Mr. I.S. Sidhu, Advocate appeared and on his request case was adjourned for moving an application for setting aside the ex parte order. But he did not move any application and stated that he can join the proceedings at the stage of arguments.

I have heard Sh. R.P. Rana, counsel for the workman and Sh. I.S. Sidhu, counsel for the management.

It is not disputed that the workman was appointed as Security Guard w.e.f. 1.3.2000 vide letter dated 23.3.2000 along with other persons and for the sake of convenience the letter is reproduced as follows:-

On the recommendation of the Security Committee the Director, CSIO has been pleased to approve the engagement of the following Ex-Servicemen as security guard for security arrangement in CSIO campus on remuneration of Rs. 2408 (Two thousand four hundred eight only) for providing service for the full month (8hours per day) w.e.f. 1.3.2000.

1. Hav. Baldev Singh,

2. Nk. Ranjit Singh

3. Hav. Sher Singh

4. Nk. Kulwant Singh

5. Hav. Amrik Singh

6. Nk. Suresh Kumar

7. Hav. Kushaldeep Singh

They will be given one weekly off and will work in shifts. If they work on extra shifts they will be paid @ Rs. 80.26 per shift or if in part @ Rs. 10 per hour. No other dues or leaves will be given to them apart from those mentioned above.

The Director, CSIO reserves the right to relieve any one or all of them from the security arrangement without assigning any reason for the same.

The learned counsel laid stress on the last lines of the letter and submitted that the Director had the right to relieve anyone or all the persons employed from the Security arrangement without assigning any reason and by using these powers, the workman was relieved from his duty and in view of the conditions of the appointment letter the order is illegal. The learned counsel also drawn my attention under Section 2(oo)(bb) to submit that since there was stipulation in the contract regarding the termination of the service of the workman, and therefore his services were legally terminated.

I have considered the contention of the learned counsel.

The workman was employed vide letter dated 23.3.2000 and he worked with the respondent management up to January 2001 i.e. for more than 10 months. Section 25F provides the conditions for retrenchment of a workman and it reads as follows:—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one months's notice in writing indicating the reasons for retrenchment and the period of notice has empired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of 15 days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

Thus a workman who has continued in service for not less than one year cannot be retrenched until the conditions laid in the said Section are fulfilled.

Section 25B defines 'continuous service' and read as follows:—

1. a workman shall be said to be in continuous service for a period if he is, for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lok out or a cessation of work which is not due to any fault on the part of the workman;

2. where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period six months, if the workman, during a period six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than-

(i) ninety five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Thus a workman who worked for 240 days would be deemed to be in continuous service for a period of one year. Thus the services of the workman who worked from 25.3.2000 to January 2001 were not to be terminated without following the procedure as laid down in Section 25F of the Act which requires service of notice as well as payment of compensation.

'Retrenchment' is defined in Section 2(oo) which read as follows:—

Retrenched means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

Since the services of the workman has been terminated otherwise then as a punishment by way of disciplinary action, as stated above, it can be safely said that he was retrenched. The Clause (bb) provides that retrenchment do not include the termination of the service of a workman as a result of non-renewal of the contract on its expiry, or of such contract being terminated under a stipulation in that behalf contained therein. Thus this Clause applies where the contract comes to an end on its expiry or it comes to an end by way of stipulation contained therein regarding the termination of the contract. But in the present case the workman was given an appointment letter and the Clause contained therein, as reproduced above, giving power to the Director to relieve anyone from the security arrangement without assigning any reason is not covered under the said Clause. Since the workman has completed more than 240 days of service, he was required to relieve the workman by following the procedure as prescribed under Section 25F of the Act and not otherwise. Thus the termination of the services of the workman is no valid and the workman is entitled to be reinstated in service.

It may be added that the services of the workman were terminated in January 2001. It is neither pleaded nor there is anything on the file that the workman remained without any work from the date of its termination till now. However, considering the facts and circumstances of the case, the workman is entitled to 50 per cent of the back wages.

In result, it is held that the action of the management in terminating the services of the workman w.e.f. 31.1.2001 is illegal and not justified and he is entitled to be reinstated in service with 50 per cent back wages. The management shall reinstate him in service within one month from the date of publication of the award. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 971.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 59/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/409/2000-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 971.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 27/02/2014.

[No. L-12012/409/2000-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/2001
PRESIDING OFFICER: SHRI R. B. PATLE

Shri Suresh Khande,
Local Secretary,
State Bank of India &
Subsidiary bank Employees Union,
Bhopal Circle, LIG E/10,
Sector I, Devendra Nagar,
Raipur .....Workman/Union

Versus

Chief General Manager,
State Bank of India,
Local Head Office,
Hoshangabad Road,
Bhopal (MP) ....Management

AWARD

(Passed on this 13th day of February, 2014)

1. As per letter dated 19-3-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/409/2000-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of India in declining reimbursement of medical bills under improved medical aid scheme to Shri Suresh Khonde, Naik, State Bank of India, Shastri Market Branch, Raipur on account of medical expenses of his wife is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman alongwith Secretary of Union filed Statement of claim at Page 5/1 to 5/9. Case of Ist party workman is that he is working as Naik in State Bank of India, Shastri Market Branch at Raipur. He also claims to be Secretary of the Union. That there is scheme providing medical aid to the workman, staff circulated on 4-1-96. Said Scheme provides for reimbursement of hospitalization expenses for employees and family members. That the wife of workman Smt. Sushila Khonde was suffering from rheumatoid arthritis, muscular atrology and anemia with various kinds of chronic ailments. Smt. Sushila was not earlier on allopathic treatment but her decease was not cured. As per advice of Dr. V.N. Pathak, wife of workman was admitted in Samadhan Hospital, Ganesh Nagar, Nagpur during the period 17-9-97 to 17-1-98. That the medical expenses incurred in said hospital was Rs. 79,572.85 was submitted for reimbursement. As per letter dated 2-2-98 to Regional office of SBI, Raipur, said bill was forwarded to local head office, Bhopal for sanction with recommendations of the Branch Manager. It is submitted that vide letter dated 5-5-99, Chief Medical Officer informed Asstt. General Manager about history of the wife of the workman that she was suffering from pain in both knees, shoulders and back for last three years and she is unable to walk and work for her personal hygiene. Workman further submits that Bank authorities have knowledge about treatment of his wife in Samadhan Hospital, Nagpur. Dy. General Manager endorsing medical examination of Smt. Sushila Khonde informed that medical examination was carried out by Bank's Sr. Medical Officer Mr. P.C. Jain. on 21-5-99, Dy. General Manager while writing a letter to the General Manager (D & PB) informed that the Medical bills sent by Shri Suresh Khonde have been scrutinized by Dr. R.R. Verma and countersigned all the bills. Vide letter dated 15-5-99, Dy. General Manager informed that the expenses were reasonable and had been recommended. Asstt. General Manager had decided to send his wife to Mumbai Hospital or Hinduja Hospital, Mumbai for treatment but when bills for reinstatement were submitted, the bills were not reimbursed. Workman had submitted various representations.

3. That as per Clause-V of the scheme, Bank had permitted reinstatement of medical expenses for Ayurvedic, Homeo, Unani medicines. 100% for the employees, 75% for the family members. Workman has reproduced relevant clause. That the bills for treatment of his wife was rejected. Workman faced financial crisis as he had incurred loan of Rs. 1,00,000 for treatment of his wife. Workman claimed to have been victimized as he was active office bearer of the Union, belongs to SC. That he had incurred medical expenses for treatment of his wife. It is unfair to reject his bills by management of SBI. On such ground, workman prays for his reimbursement of the medical bills stated above.

4. IInd party filed Written Statement at Page 8/1 to 8/5. IInd party submits that the statement of claim filed by workman is misconceived and deserves to be negated. That Statement of claim filed by workman claiming Local Secretary of the union. That the Union is not recognized by the management. The dispute is not tenable. The industrial dispute only relating to discharge, dismissal, retrenchment termination are covered under Section 2-A of the I.D. Act. The dispute under reference is lot legal. The Tribunal has no jurisdiction to decide the same. That Rule-4(b) of I.D. Rules 1957 provides the application and the statement accompanying shall be signed in the case of workman either by the President and Secretary of the Trade Union of representative of the workman. Statement of claim filed by workman is not in compliance of said rule.

5. IInd party further submits that as per hospitalization scheme. Prior consultation with Bank's Authorities, Medical Officer is necessary before admission of employee or his family member in the hospital. As per circular No. 121/84, the officers and members of the staff should except emergent cases consult the Bank's Medical Officer before getting themselves or family members admitted to a hospital. When such prior consultation is not possible, after patient is admitted in hospital, alternative arrangement may be considered. That Award Staff should seek prior approval from the concerned Bank whereas Doctors/Medical Officer before getting themselves or family members admitted in hospital. Such prior permission from Bank was not obtained by the workman as per circular dated 5-12-1984 for admission of his wife in Samadhan Hospital, Nagpur. Letter dated 19-5-99 is clear that Sr. Medical Officer recommended the case of workman's wife for opinion and treatment by Hematologist either by Doctor Amin at Bombay Hospital or Dr. Joshi at Hinduja Hospital, Bombay. However the workman had taken his wife for treatment to Samadhan Hospital, Nagpur. It is emphasized that the workman is not entitled for reinstatement of his medical bills for violation of circular dated 12/5/84.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of State Bank of India in declining reimbursement of medical bills under improved medical aid scheme to Shri Suresh Khonde, Naik, State Bank of India, Shastri Market Branch, Raipur on account of medical expenses of his wife is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final orders

REASONS

7. Ist party workman feeling aggrieved by non-reimbursement of medical of his wife for Rs. 79,572.85 is prosecuting the reference. Affidavit of evidence is filed. He has narrated most of the facts pleaded in his statement of claim that he was employee of SBI. There is scheme for medical aid for the staff as per circular dated 4-1-96. Said scheme regulates reimbursement under medical aid and reimbursement of hospitalization scheme expenses. That his wife was patient of rheumatoid arthritis, muscular atrology and anemia with various kinds of chronic ailments. She was suffering from swelling and body muscle were destroyed. His wife was earlier given allopathic treatment but the decease was not cured. As per advice of Dr. V.N. Pathak, wife of workman was admitted in Samadhan Hospital, Ganesh Nagar, Nagpur. She was treated by Dr. Babukar during the period 17-9-97 to 17-1-98. His wife got relief. That he incurred expense of Rs. 79,572.85. He submitted bills for reimbursement on 2-2-98. The bills were forwarded by Branch Manager to regional office. Regional office forwarded to Local Head office, Bhopal for sanction. Said bill was placed for scrutiny by Local Head office, Bhopal. Correspondence was made with Chief Medical Officer of the Bank. On 5-5-99, Chief Medical Officer of the Bank informed as per history, she was suffering from pain in both knees, shoulders and back for last three years and she is unable to walk and work for her personal hygiene. Other body part were also suffering from pain. That treatment was given in Samadhan Hospital, Nagpur. Affidavit is further devoted that vide letter dated 19-5-99, Sr. Medical Officer recommended the case of workman's wife for opinion and treatment by Hematologist either by Doctor Amin at Bombay Hospital or Dr. Joshi at Hinduja Hospital, Bombay. That despite of repeated representations, the bill was not sanctioned. The scheme provides 100% reimbursement for employees, 75% for family members. In the evidence of workman in his cross-examination, workman admits that without approval, the employees and their family members suffering from illness would be taken for treatment to other places. That he had not obtained prior approval before admission of his wife in Samadhan Hospital at Nagpur. Permission was sought subsequently from the Doctors. The bills were countersigned. The evidence of workman about letter issued by Sr. Medical Officer, about condition of the wife of the workman that Doctor had advised for her treatment at Bombay Hospital or Hinduja Hospital is not challenged in cross-examination. The documents referred in affidavit of witness, its zerox copies are produced. There was no denial of those documents in cross-examination of the workman.

8. So far as evidence of management's witness is concerned, Vaidya Nath Bhagat is that workman had not obtained prior approval for admission of his wife in Samadhan Hospital. That workman had not submitted bills as per Bank's scheme. He had not sought advise of the Bank's Medical Officer before admitting him in the hospital. In his cross-examination, management's witness says during 1997 to 2000, he was posted at Ambikapur, Churcha branch from June 12 he was working at Shastri Market Branch, Raipur. As per circular dated 4-1-96, employees entitled for reimbursement, circular is produced at Exhibit W-1. As per record, workman had not requested permission for treatment of his wife. Prior permission for treatment could not be obtained. The employee can request management's ex-post facto permission. The circular Exhibit M-1 dated 5.12.1984 provides that prior approval of authorized Doctor before admitting employee or family member for treatment is necessary. Workman had admitted that he had not obtained prior permission but his evidence remained unchallenged that Dr. V.N. Patnaik had advised for admission of wife in Samadhan Hospital, Nagpur. The documents produced by workman, letter dated 21.8.1999 finds clear reference for reimbursement of medical bill of his wife. The letter dated 5.5.1999 sent by Sr. Medical Officer to Asstt. General Manager Page 58 speaks that Smt. Sushila Khonde was suffering from paid in both knees, shoulders, back for last 3 years. She was unable to walk for personal hygiene. These symptoms get more aggrieved during rainy and winter season. She was treated in Ayurvedic Centre and relieved partially. On examination, her general appearance is bad. She is afebrile and mormotensive. She is a case of chronic poly arthritis with deformities in fingures of both hands. Movements are restricted and even active and passive movements are possible to 10 to 20 degrees. Joints mainly affected are both shoulders, elbows, wrist and small joints of both hands. Her both knees and ankle are edematous. She is not able to walk without support. Letter dated 7.5.1999 of Dy. General Manager was sent to General Manager alongwith the letter of Medical Officer. The zerox copies of the medical bills are produced. The witness of the management in his cross-examination admits that wife of workman died of her illness. He claims ignorance about action taken of bill of Rs. 79,572.85. The approval was necessary to prevent reimbursement. In present case, the evidence of workman that Dr. R.R. Verma had found the bills reasonable is not shattered. The scheme Clause 3(a)

of the scheme Exhibit W-1 provides for reimbursement for the expenses for Ayurvedic treatment - 75% reimbursement in case of family members. Evidence on record is clear that wife of workman is suffering from Arthritis and she died of said illness. The claim submitted by workman was also confirmed by Sr. Medical Officer *vide* letter dated 5.5.1998. IInd party has not recorded any finding that claim of Medical bill by workan is exorbitant or fictitious. The prior approval for admission in medical hospitalization is not obtained but in case of serious ailment, subsequent approval would also be accepted. For above reasons, I record my finding in Point No. in Negative.

9. In view of my finding in Point No. 1 that rejection of claim of medical bill of Rs. 79,572.85 is illegal, question arises whether workman is entitled for receiving of whole amount of bill as per scheme Exhibit W-1. Workman is entitled only for 75% amount which comes to Rs. 59685/-. Accordingly I hold and record my finding in Point No. 2.

10. In the result, award is passed as under:—

(1) The action of the management rejecting reimbursement of the Medical Bill of wife of workman is illegal.

(2) IInd party is directed to reimburse 75% amount of the bill *i.e.* Rs. 59685/-.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 972.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 275/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/159/2003-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 275/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 27/02/2014.

[No. L-12012/159/2003-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Shri Kewal Krishan, Presiding Officer.

Case No. ID 275/2005

Registered on

The President, SBI SC & ST Welfare Association, C/o 3086, Sector 44-D, Chandigarh. .....Petitioner

Versus

The Assistant General Manager, State Bank of India, LHO, Sector 17, Chandigarh. .....Respondent

APPEARANCES:

For the Workman : Sh. Raj Kaushik.

For the Management : Sh. S.K. Gupta

AWARD

(Passed on 23.10.2013)

Central Government *vide* Notification No. L-12012/159/2003-IR(B-II) dated 31.10.2003, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of State Bank of India, Chandigarh in awarding the punishment of bringing down one statges on the scale of pay for one years with cumulative effect and treating period suspension as not on duty of Sh. Gurmail Singh, Ex-Assistant is justified? If not, what relief the workman is entitled to and from which date?"

In response to the reference, notice was issued to the workman as well as to the management.

The workman appeared and submitted statement of claim pleading that he was in the Indian Air Force and an ex-serviceman and was employed with the management as Clerk-cum-Typist. He efficiently discharged his work but the Chief Manager Sh. A.K. Aggarwal placed him under suspension w.e.f. 17.5.1996 and thereafter a false charge-sheet dated 25.1.1997 was served on him. He submitted reply and thereafter an inquiry was conducted. That charges were not proved against him. However the Inquiry Officer submitted a report dated 12.5.1999 against him and after considering the inquiry report, the impugned order awarding punishment of bringing down two stages of the scale of pay for two years with cumulative effect was passed and the said order is illegal being not based on any evidence.

The management filed written reply pleading that workman was guilty of misconduct and after conducting a regular inquiry, punishment was awarded to him and the only punishment of stoppage of one increment for one year without cumulative effect was passed. The order, thus, passed is legal and valid.

In support of its case the workman filed his affidavit reiterating the case as stated in the claim petition. On the other hand P.K. Kholsa filed his affidavit on behalf of management.

After hearing the counsel for the parties the inquiry was held to be fair and proper *vide* order dated 20.10.2011.

Workman was proceeded ex-parte *vide* order dated 30.5.2012. Though workman counsel Sh. Raj Kaushik appeared on 27.8.2013 but again he did not put in its appearance today.

I have heard Sh. S.K. Gupta counsel for the management on the question whether the punishment awarded is justified.

A persual of the charge-sheet shows that the workman did not complete his work on 1.5.1996. He was reminded of his default on 2.5.1996 and again on 3.5.1996. Instead of completing the job, he entered the room of the Branch Manager and misbehaved with him as much as, he even abused him. After holding an inquiry in which workman was given due opportunity to present his case, the charges were found to be proved against him. Thus the workman is guilty of misbehaving with his superior and thus spreading insubordination in the institution in which people repose faith. The punishing authority passed the order imposing a penalty of bringing down two stages in scale of pay for two years with cumulative effect vide order dated 1.11.2000 but the Appellate Authority *vide* its order dated 26.6.2001 reduced the penalty and only imposed a penalty of stoppage of one increment for one year with cumulative effect. The workman has also claimed full wages for the period he remained under suspension. The punishing authority while passing the award dated 1.11.2010 treated the suspension period as not on duty and further found that the workman was entitled to only subsistence allowance already paid to him. Since the workman was suspended and charges were duly proved against him and it cannot be said that his suspension was without any basis and he is not entitled to full back wages during the period he remained under suspension.

Thus considering the circumstances of the case it cannot be said that the imposed punishment is excessive or improper. Thus the referrence is decided against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौरास्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 27/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/342/91-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 973.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/92) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of Saurashtra and their workmen, received by the Central Government on 27/02/2014.

[No. L-12012/342/91-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/27/92
Presiding Officer: SHRI R. B. PATLE

Shri S.S. Kulkarni,
E-A, Prem Nagar,
Manik Bagh, Palace Road,
Indore **....** Workman

Versus

Regional Manager (A-II),
State Bank of Saurashtra,
Shyam Gokul Society,
Nevrangpura, ... Management
Ahmedabad

AWARD

(Passed on this 31st day of January, 2014)

1. As per letter dated 25-2-92 by the Government of India, Ministry of Labour, New Delhi the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/342/91-IR (B-3). The dispute under reference relates to:

> "Whether the action of the management of State Bank of Saurashtra in dismissing the workman Shri S.S. Kulkarni from the services of the Bank *vide* letter No.

AD: STAFF: GM: CON: 331 dated 11-1-90 is justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted his statement of claim at Page 7 to 19. The preliminary issue is decided on 3-4-2013. The enquiry conducted against workman is found valid and proper. Their contentions in Statement of Claim relating to preliminary issue are not narrated. Workman in his statement of claim contents that he was working in State Bank of Sourashtra, Indore Branch in 1986. He was officiating head clerk. Indore Branch falls under jurisdiction of Regional Manager of Ahmedabad. Chargesheet was issued to him by Regional Manager on 6-8-86. The allegations against him were he defrauded Bank by acts of omissions. The workman filed reply to chargesheet denying allegations against him. Shri K.M. Pandya was appointed as Enquiry Officer. After conducting enquiry on various dates, Enquiry officer held 5 charges against him were proved. Thereafter he was issued showcause notice. He was dismissed from service as per order dated 11-1-1990. The appeal filed by him was heard on 3-9-90.

3. Workman submits that important documents payslip to show his deposited amount in his State Bank was not produced. Said document was vital for his defence that he had not deposited amount. The findings of Enquiry Officer are totally perverse based on presumption and assumption. That there is no evidence to show he received sum of Rs. 28,000 and 18,000. The witness No. 1 to 7 have stated that they have not paid any amount to the workman. The charge that amount was withdrawn and received by workman cannot be proved against him. That Witness No. 8-Shri S. Sinha only stated that signature in the pay slips appears that of Shri Kulkarni (workman) there is no positive evidence to show his signature on slip was found by him. Enquiry Officer presumed and drawn his conclusions. That Enquiry Officer is not handwriting expert. The other witnesses who simply stated that he signature look like Shri Kulkarni is only opinion, forgery of signature cannot be proved. There is no evidence of handwriting expert about forgery of signature was committed by him.

4. Workman submits that he alone was made scape goat. He had not committed any fraud. He was discriminated and authority who made payments were let off. Punishment imposed against him is discriminatory. Shri M.K. Srivastava, Branch Manager at relevant time was issued showcause notice. However no action was taken against him. That Branch Manager has manipulated entire case against him to save himself. He has not given any confession. Pass book of Saving Account No. 2255 was not produced though it was most relevant. It resulted in denial of reasonable opportunity. Workman reiterates that findings of Enquiry Officer are perverse. Enquiry Officer failed to consider that the verification of signature on withdrawal forms was responsibility of the Passing Officer. No action was taken against Passing Officers who passes withdrawals for payment tallying signature.

5. Workman further submits though allegation were about forgery, the incident was not reported to police for investigation. It shows that the Branch Manager was involved in the case and tried to safeguard his interest. There is no evidence that he deposited amount in Saving Bank Account 2255. On such ground, workman prays for setting aside order of his termination and his reinstatement with back wages.

6. Management of IInd party filed Written Statement at Page 25 to 37. IInd party submits that chargesheet was issued to workman alleging misconduct, forgery of signature of Account Holder withdrawing amount of Rs. 8000, 2000, 10,000, 8000 time to time. He again forged signature of Account Holder and withdrawing amount of Rs. 8500 which Bank had to refund. Unauthorisely passing withdrawal of Rs. 2000 withdrawal dated 20-12-85 was forged. Manipulatedly strike off the debit entry of Rs. 8500 dated 13-3-86 and misguiding the management by making posting in respect of withdrawals for forgery nature. That enquiry was conducted against workman. On report of Enquiry officer, charges were proved against workman. The punishment of dismissal was imposed by Disciplinary Authority. IInd party submits that workman was given full oppurtunity. The enquiry was conducted as per rules. Workman was not prevented from examining handwriting expert as his witness. It was not for management to examine the signature of workman by any expert on questioned documents. Workman was refused permission to engage advocate for his defence. That pay slip dated 20-3-86 was filed by employee and his signatures were identified by Shri Thakkar, Srivastava in the enquiry. It is denied that findings of Enquiry Officer are perverse. The opinion of handwriting expert was submitted by workman alongwith reply to showcause notice. The handwriting expert was not available for cross-examination by management. That punishment of dismissal is imposed for proving misconduct of workman does not call for interventions. It is denied that the punishment imposed against workman is discriminatory. IInd party submits that it is surprising that Ist party made confession under pressure. It is immaterial that charges are proved from evidence in enquiry. Workman did not suffer any prejudice for non-production of pass book. Ist party cannot fasten his responsibility on others. It is reiterated that the charges of fraud and forgery are proved against workman. The punishment of dismissal is proper.

7. The enquiry conducted against workman is found legal as per order on preliminary issue dated 3-4-2013. Considering pleadings between parties and order on preliminary issue, issues No. 3, 4 arise for my consideration

and determination are as under. My findings are recorded against each of them for the reasons as below:—

"(i)	Whether the charges of misconduct and proved from Enquiry proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal imposed against workman is legal and proper?	In Affirmative
(iii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

8. **Point No.1.—**As per finding on preliminary issue, enquiry conducted against workman is found legal and proper. Question arises whether the evidence in Enquiry Proceedings proves charge alleged against workman. At the time of argument, learned counsel for workman Shri A. K. Shashi submits that findings of Enquiry Officer are perverse. No documents are proved. Amount withdrawn as in charge No. 3 forging signatures material witness was not produced, pass baook was not produced in enquiry. Account holder father of minor was no examined. Even guardian and mother were not examined. There was no complaint with respect to Account No. 2256. Charge in respect of said account cannot be considered. There is no evidence about payment of Rs. 8000, 2000, 10,000 to Ist party workman, foregery is not proved. Deposit of Rs. 18,000 by workman is not proved. That evidence of management's witness is silent about payment passed by workman. Workman has no authority to pass any payment. That any of the charges are not proved against workman. The representation were submitted by employees about innocence of workman. It is emphasized that findings of Enquiry Officer are perverse.

9. In reply to above, counsel for management Mr. Ashish Shroti argues that Ist party workman was working as Head Clerk, chargesheet Exhibit M-1 was issued to him. The Account No. 2256 of minor was operated by his mother Julekha. Complaint was received by Branch Manager about withdrawing of amount. Enquiry Officer has discussed evidence while recording his findings that mother and guardian of minor Account Holder was examined as witness No. 13 in Enquiry Proceedings. The pass book was not produced by Account Holder. The argument about bias cannot be considered without pleadings. Workman was interrogated and he admitted withdrawal of amount. The Enquiry Officer has discussed said part of evidence. The findings on Charge No. 1, 2 are not perverse/withdrawal forms were written by workman. Workman is Union Leader and nobody dares to come against him. The findings of Enquiry Officer are not perverse. In reply Advocate Shri A.K. Shashi for workman reiterated that workman was not authorized to pass pay slip, pass book was not produced by Account Holder. The father of minor Account Holder Fakrudin was not examined. Shri N.K. Srivastava Passing Authority was also not examined. Pay slip was not produced.

10. Considering tenor of arguments, evidence needs to be scrutinized whether the charges alleged against workman are supported by evidence in Enquiry Proceedings. During course of argument, there was no dispute that burden of proof in criminal case needs to prove alleged offence beyond reasonable doubt, such degree of proof is not required in domestic enquiry. The Enquiry Officer is in report Page 25 to 46 has discussed the evidence separately with respect to the charges. While dealing with Charge No. 1, Enquiry Officer has referred to deposition of witness Shri S.K. Ladia. Said withdrawal was posted by him and token No. 4936 was given by him. Said withdrawal is posted in ledger sheet, said withdrawal is paid by Shri S. C. Khater. Witnesses S. Sinha, R.K. Srivastava, B. D. Bhatt have stated about verifying specimen signature card after authenticating remaining balance in concerned account. That record of Saving Bank Account Ledger Sheet of Account No. 2255 finds withdrawal inflicted in said account after debiting Rs. 8000 (workman) himself has authenticated balance Rs.10,613.51. This leads to believe that this sheet was not sent to the officer alongwith the withdrawal. That Shri S.Sinha identified the signature of Shri S.S. Kulkarni (workman). That he found from his deposition that the specimen signature has been kept under custody of Shri Kulkarni as per branch extant practice. That Mr. Sinha stick to his earlier deposition with respect to withdrawal of amount Rs.2000 dated 20-12-85. Enquiry Officer has discussed that from deposition of Shri Bhatt, question No. 18 that Shri Kulkarni has filled up withdrawal form and he confessed that amount was withdrawn by him from S.B. Account. That Shri B. D. Bhatt deposed that said withdrawal has been passed for payment by Shri Kulkarni. That specimen signature appearing on Account No. 2255 was not tallying with signature appearing on withdrawal form. That the withdrawal in said Account was posted by Shri Ladia, Saving Bank Clerk. The withdrawal was not posted by him. The Enquiry Officer has also discussed in terms of withdrawal with respect to 10-2-86. As deposed by Shri S.K.Ladia, he has posted the said withdrawal and paid by Shri S.C.Khater. From the deposition of Shri Srivastava that Shri Kulkarni has passed withdrawal by putting his initial on the said withdrawal after verifying the specimen signature etc. that Shri Srivastava has also categorically replied that as per Bank's practice generally the pass book was returned to the account holder after Head Clerk's initial. With respect to withdrawal of Rs. 8000 dated 12-3-96 Enquiry Officer considered deposition of Shri S.K. Ladia that payment of withdrawal was made by cashier Sushil Kumar Badjatiya. He confirmed the statement. That he considered deposition of Shri Bhatt that Shri Kulkarni was incharge of S.B. Department. That signature appearing

on withdrawals doesnot tally with signature on Account. That signature made on withdrawal appears to have been made by Shri Kulkarni was confirmed during deposition of Shri Bhatt. At Page 9 of his report. Enquiry Officer observed that at the branch, it was practice that Shri Kulkarni used to send withdrawals or cheque to the officer for their order by putting his initial after verifying specimen signature and after authenticating the balance in respective ledger folio. Smt. Julekha was examined as witness No. 13, the original pass book was not produced. Enquiry Officer has extensively discussed evidence.

11. I avoid to reproduce entire evidence adduced by the Officer. Considering charge No. 1 to 5 against workman and the question about considering whether the charges of misconduct and proved from Enquiry proceedings. That the finding recorded by Enquiry Officer are perverse, the scope of judicial review is needed. The evidence cannot be re-appreciated as sitting in an appeal. The statements of witnesses in Enquiry Proceedings are recorded in the register Page 1 to 145 produced on record. All 13 witnesses have confirmed their statements recorded by Investigating Officer. Witness No. 1 Dhirajlal Mohta and other witnesses have stated about procedure for withdrawal of amount. The witnesses have stated that amount was not paid to Shri Kulkarni (workman). Witness Ladia says he had issued token for withdrawal of the amount. He had posted said amount in ledger. Witness No. 5 Shirolkar in his statement say he had made payment of Rs.2000. Since it was late payment, the token was not issued to the party. He says that payment was not made to Shri Kulkarni. Witness No. 6 Khater says that person who tenders token was made payment. That he had not made payment to Shri Kulkarni Witness No. 8 Shri S. Sinha has stated that because the Head Clerk was there and initialed signify that he had verified the signature of Account Holder. He did not verify signature of the Account Holder. The Head Clerk was in custody of specimen signatures. That Head Clerk used to verify specimen signatures of Account Holders with specimen signatures of withdrawals and initial that he was satisfied that the signature was tallied. In reply to question 18, he said that Shri S.S. Kulkarni had initialed. In reply to Q.No.19 he says that withdrawal appears to be filled by Shri Kulkarni. He further says that mode of handwriting appears to be of Kulkarni's writing. In reply to Q-21, the signature on back of withdrawal is eligible but mode of writing appears to be of Shri Kulkarni. That initial entry of Rs. 8500 dated 13-3-86 appears of Shri Kulkarni. The mode of writing of balance appears in handwriting of Shri S.S.Kulkani. Thus reply to Q.No.18 to 24, Sinha has specifically said that the relevant documents bearing initials of Shri S.S.Kulkami or bears his handwriting. The evidence of Shri Sinha on the above point is not shattered in his cross-examination. Cross-examination further shows that this first posting was at Bombay. He was working under clearing etc. departments. He was working with Shri Kulkarni about six months prior to the incident. He claims to be conversant with the delegated powers of concerned clerk. In reply to Q. No. 20 in cross-examination says that mode of wirting on face of withdrawal appears to be of Shri S. S. Kulkarni. In reply to Q. No. 21, he says that he was aware of his mode of writing certain letters. In reply to Q. No. 21, 26 & 32, he confirmed that handwriting is Shri S. S. Kulkarni. In reply to Q. No. 34, Sinha says that only he was conversant of Shri Kulkarni's signature and intial. He further admits that he did not identified handwriting of Shri Kulkarni in reply to Q No. 36.

12. Witness No. 10 in his statement has supported the charges against workman that complaint was received from Account Holder. He had talk with the husband of Account Holder Shri Julekha about withdrawal of amount Rs. 27,500 or so. PW-11 R.K. Srivastava in his statement says that he relied on Head Clerk while passing withdrawal of Rs. 10,000. That said withdrawal was filed by Shri Kulkarni in his handwriting. In reply to Q. No. 15, Shri Srivastava says from the credit pay-in-slip it seems that amount were deposited by Shri Kulkarni whose signature appears on pay slips. Witness No. 12 Bhargav Dharma, Sukhjlal Bhatt has also supported the charges. Father of Account Holder met him on 18-3-86 requesting him to find out who had withdrawn the money from his son's Account No. 2255. Answer No. 6 of said witness shows that after comparing the withdrawals it was observed that money was withdrawn. The withdrawal was made by Saving Bank withdrawal form. That earlier Shri Kulkarni was working as Head Clerk in the branch. In reply to Q. No. 16 he says that withdrawal has been passed by Shri S. S. Kulkarni Head Clerk. In reply to Q. No. 19, he says during his investigation, Shri Kulkarni had booked flat at Indore. He had to pay advance money to the builder. In reply to Q. No. 10 in cross-examination, Bhatt says that Kulkarni had confessed orally to him that he had withdrawn amount from S.B. A/c. No. 2255. Mr. Bhatt had submitted report to higher authorities about amount fraudulently withdrawn by Shri Kulkarni. If evidence of witnesses is carefully considered, any of the witnesses have not suggested that some other officer in the Bank or Manager are involved in fraudulent withdrawal of amount. The workman had no reason to re-deposit the amount in A/c No. 2255. Shri Bhatt in reply to Q. No. 29 of his cross-examination says that on 20-3-86, Kulkarni came to his chamber in morning. He has shown pay-in-slip duly filled for Rs. 18,000 etc. the evidence of witness No. 13 Julkha supports that he had filed complaint about fraudulently withdrawing money from authority in the bank. The charges are supported by evidence to point out fraudulent withdrawal of money by workman himself. Therefore I record my finding in Point No. 1 in Affirmative.

13. **Point No. 2—** In view of finding in Point No. 1 as charges of fraudulent withdrawal of amount by workman are supported by evidence. On the point of punishment, learned counsel for 1st Party workman did not advance any arguments.

14. Learned counsel for management Shri Shroti submits that fraudulent withdrawal of amount is gross misconduct. The punishment of dismissal is justified. Reliance is placed in ratio held in

> "Case of Ganesh Santa Ram Sirur versus State Bank of India and another reported in 2005(1) Supreme Court Cases 13. Their Lordship dealing with penalty, quantum of punishment and its propriety held sanctioning of loan to his spouse by Bank Manager in contravention of service rules, although the cheque issued pursuant thereto was not encashed, held, not an honest decision service rule prohibiting the Bank Manager to sanction loan to his spouse held was a rule of integrity. Hence punishment of removal from service awarded to the Bank Manager was just and proper."

In case of State Bank of India and others versus Shri S. N. Goyal reported in 2008(8) Supreme Court Cases 92. Their Lordship dealing with temporary misappropriation to customer's money by Bank Manager held it is a serious misconduct warranting removal from service. Observations made in a case where a Bank Manager had received cash payment from two borrowers of loans, temporarily misappropriated the money and belatedly deposited the amounts to borrower's account that the relationship between Banker and customer is of trust. Employees of bank and in particular Manager are expected to act with absolute integrity and honesty in handling customer's/ borrower's money. Even a temporary misappropriation of such money is a serious matter."

In present case, misconduct of Ist party workman is proved. The punishment of dismissal doesnot call for interference. I therefore record my finding in Point No. 2 in Affirmative.

15. In the result, award is passed as under:-

(1) Action of the management of State Bank of Saurashtra in dismissing the workman Shri S.S. Kulkarni from the services of the Bank vide letter No. AD:STAFF:GM:CON:331 dated 11-1-90 is proper.

(2) Workman is not entitled to relied prayed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 974.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पुर्व रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 74/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41012/236/95-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 974.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/97) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Railway and their workmen, recieved by the Central Government on 27/02/2014.

[No. L-41012/236/95-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/74/97

PRESIDING OFFICER: SHRI R.B. PATLE

Shri G. Dadel, Ex. Driver,
Special Grade,
South Eastern Railway,
R/o NE Colony, Block No. 1256/H,
PO & Distt. Bilaspur (MP) ....Workman

Versus

Senior Divisional Mechanical Engineer,
South Eastern Railway,
PO & Distt. Bilaspur ...Management

AWARD

(Passed on this 14th day of February 2014)

1. As per letter dated 5-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/ 236/95-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of SE Railway, Bilaspur in removing Shri G. Dadel, Ex-Driver Loco from service w.e.f. 28-4-93 *vide* order No. M/TAC/106/NRZB/92 dated 27-4-93 is justified? If not to what relief the workman is entitled to and what should be the details"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at Page 2/1 to 2/4. Case of 1st party workman is that he was working as Driver in SE Railway. He rendered 30 years unblemished service. He was to retire with period of 2 years. Suddenly DE was conducted and he was dismissed from service. That chargesheet was served on him. The allegation in chargesheet were that he failed to control train at NRZB station and overshooted the starter signal of NRZB at danger (2) he was found in possession of liquor bottles while working on 8400 UP on 10-10-92, (3) he allowed

to travel unathorized person to travel in locomotive engine while working on said train. The workman has pleaded that enquiry conducted against him was not proper and legal. The findings of Enquiry Officer ar perverse. The workman himself brought back the train to NKJ without any disturbance. Enquiry Officer overlooked said fact. The said fact shows that the wokrman was not under influence under liquor as he himself had brought back the train to destination. The witnesses had given contradictory statements of seizure of liquor. The findings of Enquiry Officer are not supported by evidence. On such ground, workman prays for his reinstatement with back wages.

3. IInd party management filed Written Statement at Page 5/1 to 5/3. IInd party submits that disciplinary action was initiated against workman considering gravity of the misconduct, the workman was allowed to take assistance from defence counsel. He was allowed upto the destination of overshooting. It was express train. There was no alternate to avoid public complaint. During Departmental Enquiry, it is proved that workman had taken alcohol liquor was sezied from engine cabin. Workman while driving express train, failed to stop the train at station which was scheduled hault. After passing the signal, it came into his mind and the train had to be brought back on the platform. The findings of Enquiry Officer are based on presumptions. IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 9/1 to 9/4 reiterating his contentions in Statement of claim. That he himself brought train to the schedule destination. He was not under influence of liquor.

5.The enuqiry conducted against workman is found legal and proper. Considering pleadings on record. the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the misconduct of the delinquent workman is proved from evidence in Enquiry Proceedings?	In affirmative
(ii)	Whether punishmsent of removal from service of workman is legal and proper?	In Negative
(iii)	If so, to what relief the workman is entitled?	As per final order

REASONS

6. As stated above, enquiry conducted against workman is found legal and proper, question remains to be decided whether the evidence in Enquriy Proceedings proves charges against the workman and punishment of dismissal from service is proper. At the time of argument, learned counsel for workman Shri V.N. Sharma submits that charges against workman were of overshooting of train at Station NRZB. Charge No. 2 carrying liquor bottle in Engine, (3) allowing unauthorized person. There was no change against work of driving train under influence of liquor. That Enquiry Officer did not consider the defence of workman that evidence of management's witness Shri Parte shows that workman himself has driven back the train to its destination. That the evidence about seizure of liquor bottle is not consistent. The witnesses N. Prasad says he has not seen liquor bottle. He has not supported the seizure. The charge about unauthorized travelling was denied. The evidence is not consistent.

7. Learned counsel for IInd party Shri R.K. Soni submits that the charge against workman about overshooting is supported by evidence. The chain was pulled to stop the train. Liquor bottle was found is engine cabin. Workman has not explained the same. The evidence of management's witness is that 3-4 liquor bottles were found. The breath test was conducted, two boys were found sleeping in the engine cabin, the charges are proved.

8.Considering the tenure of arguments, evidence in Enquiry Proceedings needs to be seen. Shri S.B. Parte in his statement says on 4-10-92 at 12.55 hours, train was scheduled. Train arrived at 13.50 hours after having normal stoppage, train had left BRS at about 19.2. hours, While approaching NRZB home, he felt that the speed of the train was at higher side, as such tried to control the train by destroying the vacum gradually. The SLR of the train ultimately stopped between starter and Advance starter of NRZB station overshooting starter signal and the engine was standing after passing Advanced Starter at Danger. In his further statement, he has stated about that the liquor bottle was found. He has given memo to the workman. He had questioned driver. He replied it was his mistake to have overshoot. When he asked driver whether he could drive train, he answered in affirmative. In his extensive cross-examination, he says that he was working as guard. Train had run normal from Bilaspur to BRS but train have passed through NRZB, a scheduled haulting station. He has re-affirmed that when he asked Driver, how it happened, whether he was in condition of driven, Driver said Yes. In reply to question No. 9, he says seeking the driver, looking very drowsy, talking very low, he observed him under infuence of liquor. In reply to Q.No. 70, he says that he had not taken action since he had told that grand children of working Assistant Driver of train were found in the engine. In reply to Q.No. 22, witness says he found Driver in normal condition sitting on his seat. In reply to Q.No. 23, the witness says he was under influence of liquor. In reply to Q. 26 witness says the train was backed very normally. That in his further cross-examination shows that the empty liquor bottles were seized in his presence. He signed the seizure note. The seized material was not recovered from box, luggage of Driver. That he never noticed that Dadel workman and Preetam drunken on duty in the past. The evidence of Shri Parte about overshooting, driver found in

possession of liquor bottles carrying two unauthorized passengers is not shattered. His evidence supports the finding of Enquiry officer. The evidence of J.N. Singh and B.B. Rai corroborates the evidence of Shri Parte on above points. The scope of judicial review is limited. The evidence cannot be re-appreciated as Appellate Authority. The witness Shri Rai says train was supposed to stop at NRZB but it was passing through without haulting. They were travelling in 3-tier compartment. The passengers in our compartment got panic and started shouting. They pulled pulled the Alaram chain. The train went and stopped ahead of NRZB station after passing cabin, he found Driver and Assistant Driver in drunken condition. He noticed one empty quarter bottle of country liquor in empty condition by the side of the driver, another half bottle with about 100 ml quantity of liquor. In his further cross-examination, he says seizure memo was prepared at platform of NRZB station after the train was left. Thus he corroborates the evidence of MW-1 Parte. In his cross-examination, he says that he along with escort party were travelling in the 3-tier compartment. That personally he seized materials as per seizure note. When he prepared seizure memo at platform, he went to Driver for their signature but they refused. That he further says that he had gone to Engine at the stop where engine was standing after overshooting. MW-4 Prasad says since he was working as LR, he thought that train must have no stop at NRZB. He confirmed with signals and found starter signal was shown red, immediately applied vaccum break. Ultimately train stopped disregarding danger. The Guard came, 7 porter also came, they given signal for backing the train. However he says he did not notice liquor bottle. His evidence cannot be ground for discarding evidence of other witnesses of the management. The evidence of MW-1 to 3 supporting the charges against workman. Therefore it cannot be said that findings of Enquiry Officer are perverse.

9. Learned cousel for workman Shri B.N. Sharma relies on cetin of cases. Ratio held in

''Case of Nirmala J. Jhala *versus* State of Gujarat and another reported in 2013(138_-FLR-227 is on the point that standard of proof in disciplinary proceedings is not like criminal proceedings. Proof beyond reasonable doubt. The principles of probabilities applies to the disciplinary proceedings."

From evidence discussed above, it cannot be said that finding of Enquiry Officer are perverse.

> "In case of Vinod Kumar versus Bank of India reported in 2014-140/FLR-78. The ratio laid down is if production of document is not even, the contents have to be proved by examining witnesses."

The ratio cannot be applied beneficially to the present case as the management witness have supported seizure of liquor bottles.

> "In case of Anil Kumar versus Presiding Officer and others reported in 1985(3) SSC-378. Ratio is held that the Enquiry Report should be reasoned, absence of reason shows non-application of mind."

In present case, Enquiry Officer has discussed evidence of the management's witnesses. Ratio cannot be applied to the present case.

10. As evidence discussed above supports charges against workman, the evidence cannot be re-appreciated. The findings of Enquiry officer cannot be said perverse. The evidence is sufficient to prove charges against workman. Therefore I record my finding in Point No. 1 in Affirmative.

11. Point No. 2- In view of my finding in Point No. 1, question arises whether the punishment of dismissal froms service of workman is proper and legal? He evidence on record pointed out by learned counsel for workman Shri B.N. Sharma shows that the train was over-shooted. The workman himself had brought back train safely. The train had over-shooted to the point. West cabin NRZB station. The train was stopped pulling train. There is no charge that workman was under influence of liquor while driving the train. Learned counsel Shri B.N. Sharma submits that punishment of dismissal from service is not proper. In support of his argument, learned counsel relies on ratio held in cetin of cases.

> "In case of Essel Mining and Industrial Ltd. Versus Pravakar Mahakud reported in 2012/134/FLR-533. His Lordship of Orissa court dealing with termination of service in the case where accident caused leading to death of a child while driving a heavy vehicle. As the incident which lead to the unfortunate death of a child was clearly an accident and no negligence can be attributed out of such accident. Workman was holding a valid licence and was competent to drive heavy vehicle. He was not udner intoxication or incompetent of driving vehicle. As incident which lead to the unfortunate death of a child was clearly an accident and no negligence can be attributed out of such accident, workman was holding legal licence, he was competent to drive vehicle, the punishment of termination was held grossly disproportionate, reinstatement of workman was directed."

In case of A.L. Kalra versus the Project and Equipment reported in AIR 1984-SC-1361 dealing with the employment of workman after his termination held that the workman was not entitled to salary for the period he was employed.

The ratio is not comparing to the present case at hand as workman in present case was not in employment rather the workman has retired after attaining age of superanuation long back.

In case of AIR-1978-SC-474 submitted in the bunch of citation has no bearing to present case. There is no

question of admission of additional evidence or dismissal of workman without enquiry. In para-5 of the judgment their Lordship held that Part-IV of constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour.

In case of Jitendra Singh Rathor versus Shri Baidiyanath Ayurved Bhawan Ltd. And another reported in 1984(3) Supreme Court cases 5 held where Tribunal awarded reinstatement with half back wages, High Court not justified in substituting its own award of compensation in lieu of reinstatement-Reinstatement-Constitution of India."

In Case of management of Hindustan Machine Tools Ltd. Bangalore versus Mohd. Usman and another reported in 1984(1) SSC 152. Their Lordship of the Apex Court held where punishment imposed in excessive, Labour court in exercise of its discretion under Section 11-A can reduce the punishment. The punishment of stoppage of increments for two years imposed by Labour Court setting aside employer's order of dismissal was upheld.

Similar view was held in case of Jaswant Singh versus Pepsu Roadways Transport Corporation and another reported in 1984(1) SSC 35.

In present case for proved charge of overshooting, possession of liquor bottles and carrying two unauthorized passenger, the punishment of dismissal is imposed. The evidence in Enquiry proceeding is clear. The Driver himself has brought back train to scheduled destination so he was not under influence of liquor. There was no charge of workman driving train under influence of liquor. The overshooting was up to West Cabin. Considering the proved charges, punishment of dismissal would be appropriate. The punishment of with-holding 3 increments would not be appropriate. The punishment of termination was imposed against workman on 27-4-93. The evidence is not clear when workman has retired from service. Therefore withholding three increments of workman, his reinstatement without back wages would be appropriate. For above reasons, I record my finding Point No.2 in Negative.

12. Point No. 3-In view of my finding in Point No. 1,2 that termination of workman needs to be set-aside. Punishment of withholding three increments would meet the ends of justice. Workman in entitled for reinstatement without back wages. Accordingly I record my finding on Point No. 3.

13. In the result, award is passed as under:—

(1) Action of IInd party removing Shri G. Dadel, Driver from service w.e.f. 28-4-93 is not legal.

(2) IInd party is directed to reinstate workman with continuity of service without back wages. Punishment of withholding 3 increments is imposed instead of termination from service.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 975.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 101/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-02-2014 को प्राप्त हुआ था।

[सं॰ एल-17012/3/2005-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.101/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court,. Jabalpur as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 27-02-2014.

[No. L-17012/3/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/101/2005

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Dinesh Singh,
B-175, Adarsh Nagar,
Hoshangabad Road,
Bhopal. ...Workman

Versus

Regional Manager,
Life Insurance Corporation of India,
Central Zonal Office,
Hoshangabad Road,
Bhopal ...Management

AWARD

(Passed on this 11th day of February, 2014)

1. As per letter dated 27-9-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No. L-17012/3/2005-IR(B-I). The dispute under reference relates to :

"Whether the action of the management of Regional Manager, Life Insurance Corporation of India, Bhopal in terminating the services of Shri Dinesh Singh w.e.f. Feb., 2001 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 3/1 to 3/4. Case of List party workman is that he was appointed as temporary Care Taker in VIP Guest House under IInd party from 12-5-94. That work of workman was excellent no complaints were against him. That relative of workman falsely registered case for offence under Sections 457 and 380 of IPC relating to incident dated 16-12-2000-crime No. 102/2001. Due to criminal case registered against him, his services were terminated from February, 2001. Workman was paid salary Rs. 1650/- for February, 2001. Workman was acquitted in criminal case by JMC-I, Bhopal on 1-5-2003.

3. Workman has written various letters to the IInd party dated 6-5-03 to Zonal Manager, LIC, 13-5-03, 15-7-03, 26-8-03, 22-9-03 to Chairman, LIC. Legal notice was issued on 22-11-03 to IInd party. No reply was given to the notice. Workman submits that he was working form 12-5-94 to February, 2001 with IInd party. He was removed from service without complying the legal provisions. Even after his acquittal in criminal case, he was not allowed to work. On such ground, workman prays for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 6/2 to 6/10. IInd party submits that Ist party workman was never its employee. There is no sanctioned post of Care Taker in VIP Guest House on contractual basis. His services were liable to be terminated without notice. Excellent service record of workman is denied. Workman was prosecuted for offence under Sections 457 and 380 of IPC before JMC-I, Bhopal. The services of workman as contractual care taker were terminated from February, 2001 as per notesheet. The corporation thought that a man of doubtful integrity who was involved in some criminal matter was not a person to be retained. It was one of the reason but not sole reason for termination of contract. Workman was initially paid Rs. 1000/- per month. The wages were increased to Rs. 1650/- per month. Verbal contract was terminated doesnot give right for reinstatement to workman. Notice given by workman was replied suitably on 27-11-03. Workman was given acquittal under benefit of doubt. It was not clear acquittal. Their exists no dispute between the parties. After termination of oral contract, IInd party had engaged other contract worker Mr. Gopal. It is reiterated that post of care taker is not sanctioned post. That LIC is a statutory corporation. Its affairs are covered by rules and regulations under Insurance Act, 1938. The temporary staff could be employed by the Zonal Manager on temporary basis. Workman was not employed as workman. That temporary appointment of Class-IV post is permissible as per strength of sanctioned peons. That LIC has framed rules under Section 48-2(cc) of the Life Insurance Corporation of India Act, 1956. IInd party relying on ratio held in different cases by Apex Court submits that provisions of I.D. Act are not applicable to LIC. On such contentions, IInd party prays that claim of workman cannot be allowed.

5. Workman filed rejoinder at Page 8/1 to 8/3 reiterating his contentions in Statement of Claim. That his services have been terminated without his fault. He prays for reinstatement.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Regional Manager, Life Insurance Corporation of India, Bhopal in terminating the services of Shri Dinesh Singh w.e.f. Feb 2001 is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per Final Order

REASONS

7. Workman is challenging termination of his services. He has produced document Exhibit W-1. Engagement of workman from 2-6-94 on salary consolidated amount of Rs. 1000/-. Exhibit W-2 is receipt of payment Rs. 1650/- on 3-3-2001. Exhibit W-3 is copy of submissions before ALC, Bhopal. Management has produced notice at Exhibit M-1. Said notice was sent on behalf of workman by Advocate Ramesh Chandra Agrawal. Exhibit M-2 is application submitted by workman for opening Bank Account with the Bank. M-3 is copy of instructions issued by LRs.

8. Workman filed affidavit of his evidence stating that he was engaged from 12-5-94. His services were discontinued from February, 2001. He was paid wages Rs. 1650/-. He was acquitted in criminal case on 1-5-03. He had repeatedly requested IInd party for reinstatement. That ratio held in case of Venugopal cannot be applied to present case as facts are different. Workman in his cross-examination says about his engagement as Security Guard at residence of General Manager for 1-2 years. Thereafter he was working at Guest House from 12-5-94 on contract basis. He was not interviewed, appointment letter was given to him. He was paid consolidated pay Rs. 1000, increased to Rs. 1500, 1650/-. He was not given annual increments. Provident Fund was not deducted from his pay. He was

arranging tea, meals etc. in the Guest House at the rates fixed by the LIC. He was investing his money for purchase of articles. That he was submitting leave application to Mr. Gupta but its copy is not with him. One Mr. Gopal is working in the guest house, he has been regularized. What work he was doing—the same work is being done by Shri Gopal. In his further cross-examination, workman denies that he was engaged under contractor instead he says that he was employed as temporary employee. That there are 3 Guest House of LIC, all 3 caretakers were receiving same payment.

9. The evidence of management's witness S.D. Mehra is on the point that workman was engaged as caretaker in VIP Guest House on contract basis. He was discontinued from February, 2001. The notesheet was prepared before his termination. In the evidence in cross-examination of management's witness he denies that workman was working as caretaker during the relevant period. The witness says that workman was working on contract basis. The document Exhibit W-1, W-2 are admitted by the witness. That the services of workman were not terminated but the contract was terminated. The witness claims ignorance whether notice for relieving workman is produced on record. Workman was acquitted in benefit of doubt. Management's witness claims ignorance whether workman submitted application for allowing him on duty after his acquittal.

10. The evidence of management's withness shows that the services of workman were terminated preparing a note, no enquiry was conducted against workman before termination of his service. In his note of argument, learned counsel for management submitted that the Provision of I.D. Act are not applicable as workman was not employed as an employee rather he was engaged on contract basis as care taker. The evidence of management's witness is not disclosing what were the rates of different articles to be supplied in VIP Guest House. He was paid Rs. 1650/- in February 2001.

11. Section 2(s) of I.D. Act defines—

"Workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) Who is subject to Air Force Act, 1950 or the Army Act, 1950 or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity or

(iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises a either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

12. Workman was not working in supervisory or managerial post. His services were engaged by IInd party as caretaker in guest House is squarely covered under Section 2(s) of I.D. Act. His services were terminated without notice merely as he was prosecuted in a criminal case. The workman was working from 12-5-94 to February 2001. IInd party has not complied Section 25-F of I.D. Act. Termination of his service is illegal, therefore I record my finding in Point No. 1 in Affirmative.

13. In view of my finding on Point No. 1, termination of services of workman is illegal, question arises whether the workman is entitled for reinstatement with back wages. Workman in his cross examination has stated that he is working as Security Guard in hotel and gets Rs. 2500/- a month. That his family consists of his wife, daugther. They are doing work of washing plates in the hotels. From evidence in cross- examination of workman, it is clear that the workman is in gainful employment. However his services are terminated in violation of Section 25-F therefore the workman deserves his reinstatement but without back wages. Accordingly I record my finding in Point No. 2.

14. In the result, award is passed as under:—

(1) Action of the management of Regional Manager, Life Insurance Corporation of India, Bhopal in terminating the services of Shri Dinesh Singh w.e.f. Feb. 2001 is illegal.

(2) IInd party is directed to reinstate workman with continuity of workman but without back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 976.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट संदर्भ संख्या 34/2008 को प्रकाशित करती है जो केन्द्रीय सरकार को 27/2/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/18/2008-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 976.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 27/2/2014.

[No. L-12012/18/2008-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/34/2008 Date: 14.02.2014.

Party No. 1 : The Assistant General Manager, State Bank of India, Zonal Office, S.V. Patel Marg, Nagpur

V/s.

Party No. 2 : The Asstt. General Secretary, State Bank Staff Union, C/O State Bank of India, Zonal Office, S.V. Patel Marg, Nagpur, Maharashtra.

AWARD

(Dated: 14th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India, Zonal Office and their workman, Shri P.L. Mahadole, for adjudication, as per letter No. L-12012/18/2008-IR(B-I) dated 16-09-2008, with the following schedule:—

> "Whether the action of the management of the State Bank of India through its Assistant General Manager, Region-VI (Disciplinary Authority), Nagpur and Dy. General Manager (Appellate Authority), Nagpur in terminating the service of workman, Shri P.L Mahadole w.e.f 15.09.2005, is legal and justified? To what relief is the workman concerned entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri P.L. Mahadole, ("the workman" in short) through his union, "State Bank Staff Union ("the union" in short) filed the statement of claim and the management of State Bank of India ("party no. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim by the union is that it (union) is a registered trade union of the employees working with party no. 1 and the workman is its member and party no. 1 is a statutory Bank and is an industry within the difinition of Section 2 (j) of the Act and the service conditions of the employees of party no. 1 are governed by the provisions of Sastry Award, Desai Award and different bi-partite settlements signed between the management and their workmen and a charge sheet under clause 5(p) of the bi-partite settlement dated 08.11.2004 was issued against the workman on the allegation of his remaining absent from duties for a period of more than 30 days and the Disciplinary authority appointed the Enquiry Officer to conduct the departmental enquiry and the Enquiry Officer conducted the departmental enquiry and submitted his report holding the charges to have been proved against the workman and the Disciplinary authority by order dated 15.09.2005 awarded the punishment of removal from service without notice *w.e.f.* 15.09.2005 and the workman preferred an appeal against the order of punishment, but the appeal was dismissed by the Appellate Authority. The further case of the union on behalf of the workman is that the departmental enquiry conducted by Shri S.Y. Ingole was not fair and valid and the entire enquiry came to be concluded during the proceedings held between 16.12.2004 to 02.02.2005 and the Enquiry Officer lost sight of the fact that the workman did not know English and it was therefore, necessary on the part of the Enquiry Officer to take required steps to give every opportunity to the workman, but the same was not done and the documents called for from the Enquiry Officer, even though ordered to be produced were not supplied to the workman with an opportunity to study the same and whatever documents were produced by the Presenting Officer were given to the workman in the eleventh hour and no adequate opportunity was given to the workman and there were no proved documents on the record of the enquiry and the Enquiry Officer did not take any pain to see that the documents produced by the Presenting Office were duly proved and admitted by the delinquent employee and the presenting Officer preferred not to examine any witness on behalf of the Bank and he also did not produce any formal witness to prove the documents, so the Enquiry Officer should have concluded the enquiry for want of any evidence on record and he enquiry is therefore vitiated and the Enquiry Officer was biased against the workman and took it for granted that his duty was only to declare the charge as proved without any document/evidence on record and he conducted the entire enquiry without proper application of mind and along with the charge sheet, neither list of documents was supplied nor list of witnesses was given as a result of which, proper opportunity was denied to the workman to defend himself and the charge sheet submitted against the workman was not plain and specific and the same was completely under the shadow of the previous disciplinary action taken by

party no.1 against the workman and by specifying the previous closed disciplinary action and relying on the same for the charge sheet in question, establishes bias attitude of the authorities and the Enquiry Officer submitted his report without mentioning any date on the same and the Enquiry Officer lost sight of the fact that he had to give his findings only basing on the evidence proved before him, but without any evidence on record, the Enquiry Officer held the charges levelled against the workman to have been proved and the report of the Enquiry Officer is most casual and not based on any evidence and for all these reasons, the findings of the Enquiry Officer are perverse.

The further case of the workman as presented by the union is that for declaring the charge proved under para 5(p), it is necessary to prove that workman remained absent without any intimation, but this was not proved before the Enquiry Officer and neither the Enquiry Officer nor the authorities considered this aspect and punishment of removal from service was without notice was awarded recklessly and the punishment is therefore, bad in law and the authorities below did not consider the fact that leave was taken by him for genunine reasons beyond his control and the punishment is shockingly disproportionate to the gravity of the misconduct and the workman had put in 20 years of service and due to the punishment, he was thrown on the street and he is not in any employment, much less gainful employment after removal from service.

Prayer has been made by the union for the reinstatement of the workman in service with continuity in service and full back wages and all consequential benefits.

3. The party no. 1 in the written statement has pleaded *inter-alia* that the workman was working at Wardha branch of the Bank as Farash-cum-messenger, when the charge sheet came to be issued to him and the workman remained unauthorized absent from his duties from 15.10.1996 for 1104 days and as such, charge sheet dated 06.12.2002 was issued against him and after conducting the enquiry fairly and properly, the misconduct of the workman was found to be proved and the Disciplinary Authority took a lenient view, considering the family problems as stated by the workman and the promises made by him to follow the leave Rules and imposed a mild punishment of bringing down his pay by two stages and the said punishment was accepted by the workman and the workman again started remaining unauthorisedly absent without any intimation from his duties from 28.09.2004 and as such, memo dated 28.10.2004 was given to him, but he did not reply to the said memo, so the workman was issued with the charge sheet on 08.11.2004, which was received by him on 19.11.2004 and the Enquiry Officer conducted the enquiry from 06.12.2004 to 22.02.2005, in five sittings, giving ample opportunity to the workman to defend his case and after the enquiry, the Enquiry Officer submitted his enquiry report to the Disciplinary Authority and the Disciplinary Authority issued a show cause notice dated 30.06.2005 along with a copy of the enquiry report, proposing the punishment of removal from services and the workman submitted his reply dated 23.07.2005, where in, he admitted to have remained unauthorized absent without intimation and personal hearing was given to the workman by the Disciplinary Authority and after considering the relevant materials, the facts of the case and the report of the Enquiry Officer , passed the final order dated 15.09.2005, imposing the punishment of "Removal from service without notice" in terms of para 6(b) of the Bipartite settlement dated 10.04.2002 and the workman preferred an appeal against the final order, but the appeal was dismissed on 17.12.2005.

The further case of party no. 1 is that in the charge sheet, the workman was informed and given clear understanding of the charge and the workman engaged his defence representative, Shri S.K. Awathankar and he was provided with all the documents relied upon by it and the workman did not dispute the documents provided by it and on the first date of the enquiry on 16.12.2004, the charges were read over and explained by the Enquiry Officer to the workman and he denied the same and the workman was provided with all the documents relied on by it and so also the documents demanded by the workman through his defence representative and he was given seven days time for verifying the documents and he did not dispute the correctness of the documents and the workman was given the opportunity to present his witnesses, but he did not examine any witness and ir had complied with all the principles of natural justice while conducting the enquiry and the Enquiry Officer has also given justifiable reasons for holding the charges to have been proved against the workman and having regard to the gross misconduct of the workman, the punishment of removal of the workman from services was passed and the Enquiry Officer acted impartially and without any bias and the charge sheet was very specific and clear and the previous charges were mentioned in the charge sheet for the reason that the workman should be aware that the Bank is going to consider his past misconduct alongwith the fresh misconduct and there was no irregularity in the charge sheet and the workman is not entitled to any relief.

4. As this is a case of termination of the workman from services, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken for consideration as a preliminary issue and by order dated 21.11.2013, the departmental enquiry conduced against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that in the entire record of the departmental proceedings, there is no proved document and the documents produced by the management were not duly proved and no witness was

examined by the management to prove the documents on which reliance was placed to prove the charges against the workman and as such, the findings of the Enquiry Officer which were based on such documents are perverse. It was further submitted by the learned advocate for the workman that the charge sheet submitted by against the workman was completely under the shadow of previous disciplinary action taken against the workman by the party No.1, for which he was duly punished and therefore, the charge sheet was not proper and valid and the entire enquiry conducted on the invalid charge sheet was not proper and the authorities of party No.1 did not consider the fact that leave taken by the workman was for genuine reasons and for reasons beyond his control and the punishment of removal from service is therefore, is shockingly disproportionate to the gravity of the misconduct and it was not such a lapse on the part of the workman even if proved, where punishment from service was warranted and the order impugned suffers from lawful display of managerial powers by the party No.1 and as such, the said order is liable to be set aside in the interest of justice.

It is to be mentioned here that the issue of mentioning of the previous misconduct of remaining unauthorisedly absent from duty and the punishment imposed against the workman had been raised by the learned advocate for the workman at the time of deciding the preliminary issue of the fairness or otherwise of the validity of the enquiry and the same had been duly considered and answered against the workman while passing the order on 21.11.2013. So, there is no scope to consider the said issue again.

6. Per contra, it was submitted by the learned advocate for party No.1 that by order dated 21.11.2013, it has already been held by this Tribunal that the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and charge sheet was served on the workman for remaining unauthorised absent from duty for a period beyond 30 days, which act was "grave misconduct" in terms of para 5 (p) of bi-partite settlement dated 10.04.2002 and the workman was also informed in the charge sheet about taking in to consideration the punishment imposed against him for his past misconduct of remaining unauthorisedly absent for 1104 days and the Enquiry Officer has given justifiable reasons for holding the charges levelled against the workman to have been proved during the enquiry and it cannot be said that the findings of the Enquiry Officer are perverse. It was further submitted by the learned advocate for the party No.1 that the workman was given lighter punishment for the earlier grave misconduct of remaining unauthorisedly absent for 1104 days and still then the workman continued the misconduct and therefore, it cannot be said that the punishment awarded to the workman is shockingly disproportionate and the action of party no.1 is legal and justified and the workman is not entitled to any relief.

In support of the submissions, the learned advocate for the party No.1 placed reliance on the decisions reported in (2008) 1 SCC_224 (L&T Komatsu Ltd. *vs.* Uday Kumar) and (2006) 7 SCC-410 (GM Appellate Authority Bank of India *vs.* Mohd. Nizamuddin).

7. Before delving into the merit of the matter, I think it proper to mention about the settled principles enunciated by the Hon'ble Apex Court in regard to the jurisdiction of the Tribunal to interfere with the punishment of dismissal or termination imposed in a departmental inquiry against the workman. It is well settled by the Hon'ble Apex Court that, ''In case of dismissal or termination, the jurisdiction of the industrial tribunal is limited to see as to whether the impugned order has been passed malafide with improper nature or is the result of a desire to victimize the workman or arising out of unfair labour practice. If a proper charge has been framed and inquiry made, the findings or conclusions can only interfered, if they are perverse and are not supported by any evidence or if the trial has been conducted unfairly in violation of the principles of natural justice. It is not open to an industrial tribunal to sit in appeal over the conclusions recorded in the domestic enquiry.

8. In this case, on perusal of the records of the departmental enquiry held against the workman, it is found that on 11.01.2005, the management representative produced nine documents including the three documents demanded by the defence representative for the workman and the said documents were taken on record and copies of the said documents were given to the defence representative and the documents were marked as P Ex. 1 to P Ex. 9 and on the request of the defence representative seven days time was granted by the Enquiry Officer for verification and the genuineness of the said documents was not disputed either by the workman or his defence representative. No witness was examined on behalf of the management in the departmental enquiry. The defence representative also placed reliance on the said documents to show that the charge was not proved against the workman. So, it cannot be said that there was no proved document on the record of the departmental enquiry.

9. Admittedly, charge sheet dated 08.11.2004 was served on the workman under para 5 (p) of the Bipartite agreement dated 10.04.2002 on the allegation of his not reporting for duties since 28.09.2004 to 08.11.2004, *i.e.* more than 30 days. It is found from record that remaining unauthorisedly absent without intimation continuously for exceeding 30 days amounts to gross misconduct and punishment of dismissal without notice is one of the punishments prescribed for commission of grave misconduct by an employee, under para 6 of the said Bipartite agreement.

10. On perusal of the material on record, it is found that the findings of the Enquiry Officer are completely against the evidence on record and so also, in excess of the charge. The conclusion drawn by the Enquiry Officer

on the materials on record of the enquiry cannot be that of a reasonable man and the findings of the Enquiry Officer are against the whole body of evidence adduced.

In his report, Ext. W-IV, the Enquiry Officer has mentioned that the workman left the branch on 28th, 29th and 30th September, 2004 at 3 P.M., 12 noon and 11 A.M. respectively as recorded in the muster roll, Ext. M-XII. The said facts clearly show that the workman had attended his duty on those days, but he left the office before the closing hours of the office. On perusal of the muster roll, Ext. M-XII, it is found that the signature of the workman with time of arrival and departure dated 28th, 29th, and 30th, September, 2004 have been rounded up and it has been mentioned, "left at 3 P.M., 12 noon and 11 A.M.", respectively and such facts have also been mentioned in the remarks column of the said register. It is not known as to who made such endorsement and when it was made. It is also mentioned below the signature of the workman dated 30.09.2004 to deduct the date of absence of the workman from his leave. There is no material on record to show that if any explanation was called from the workman for leaving the office before the schedule time of departure on those three days or leave was deducted from his account or any other action was taken against him for the same.

In his report, the Enquiry Officer has also mentioned about the workman submitting a leave application on 06.10.2004. It is mentioned by the Enquiry Officer that the leave application dated 06.10.2004 bears neither the period of leave nor type of leave and reason there for and as such it is not acceptable. It is to be mentioned that the Enquiry Officer was not the authority to consider the validity of the leave application of the workman dated 06.10.2004. The said leave application has been marked as Ext. M-VI. On perusal of the same it is found that nothing has been mentioned on the said application as to whether the same was considered or not by the competent authority. There is also no material on record to show as to what action was taken by party No.1 on Ext. M-VI. It is also found that the Enquiry Officer has mentioned about the workman remaining unauthorisedly absent for 1104 days and the workman was being punished and the light of the above findings, the charge was proved against the workman. The above stated facts show that the Enquiry Officer relied on extraneous materials in holding the charge to have been proved against the workman.

It is also found from the record of the departmental proceedings dated 18.01.2005 that the Presenting officer submitted about the workman giving his explanation on 25.11.2004 for his absence along with a medical certificate showing that he was under medical treatment from 5th October, 2004 to 17th November, 2004 and the same covering the period of absence of the workman from 05.10.2004 to 17.11.2004. However, the Enquiry Officer while submitting his report did not consider about the plea taken by the workman and the medical certificate submitted in support of his illness. The Enquiry Officer has not mentioned a single word in that respect. Hence, it is clear that the findings of the Enquiry Officer are perverse.

11. The order of punishment dated 15.09.2005 passed by the Disciplinary Authority has been marked as Ext. W-II. In his order, the Disciplinary Authority has mentioned that the workman remained unauthorized absent for 1321 days up to 08.11.2005 and he remained unauthorized absent for 77 days since 08.11.2004 to 31.08.2005 and such absence affected the customer service. So, it is clear that the findings of the Disciplinary Authority are also in excess of the charge levelled against the workman.

Likewise, the Appellate Authority has mentioned in his order dated 28.02.2006, Ext W-VIII that the workman remained absent from duty for more than 1321 days and in his concluding paragraph, he has mentioned that, ''As an Appellate Authority, I agree with the decision taken by the appointing authority for the reason that an absence of more than 1321 days does not allow any leniency in the punishment. I, therefore, upheld the decision taken by the appointing authority'' The Appellate Authority has not given any finding as to whether from the evidence on the record of the departmental enquiry, the charge was proved against the workman. Rather, the findings of the Appellate Authority are also in excess of the charge levelled against the workman.

From the materials on record, it is found that the findings of the Enquiry Officer are against the evidence on record of the departmental enquiry and therefore are perverse. As the punishment imposed against the workman was based on such perverse findings, the same is illegal and cannot be sustained. Therefore, the punishment of dismissal from service without notice imposed against the workman is liable to be quashed and set aside.

12. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. The workman is certainly entitled for reinstatement in service with continuity. After taking into consideration the facts and circumstances of the case, I think that the workman is also entitled to 25% back wages and all other consequential service benefits.

In view of the facts and circumstances of the case as mentioned above, with respect, I am of the view that the decisions cited by the learned advocate for the party No. 1 have no application to the reference. Hence, it is ordered:

ORDER

The action of the management of the State Bank of India through its Assistant General Manager, Region-VI (Disciplinary Authority), Nagpur & Dy. General Manager (Appellate Authority), Nagpur in terminating the service of workman, Shri P.L. Mahadole w.e.f. 15.09.2005, is illegal and unjustified. Therefore, the punishment of dismissal

from service without notice imposed against the workman is quashed and set aside. The workman is entitled for reinstatement in service with continuity. The workman is also entitled to 25% of back wages from the date of his dismissal from service till the date of his actual reinstatement in service and all other consequential service benefits. The party No.1 is directed to implement the award within one month of the date of notification of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 977.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 36/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/2/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/37/2009-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 977.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. I, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 27/02/2014.

[No. L-12012/37/2009-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 36/2009

Smt. Sheela Devi W/o Late Shri Satya Prakash,
R/o H.No. 445, Village & P.O. Bakhatwarpur,
Delhi-110036 ....Workman

Versus

1. The Asstt. General Manager,
   Region-IV, State Bank of India,
   Zonal Office, 11, Parliament Street,
   New Delhi.

2. The Dy. General Manager,
   Delhi Zone Office II,
   11, Parliament Street,
   New Delhi. ....Management

ORDER

An industrial dispute, referred to this Tribunal for adjudication, vide order No. L-12012/37/2009-IR (B-I), New Delhi dated 23.7.2009, was articulated vide award dated on 31.08.2012. Inadvertently in last sentence of the award clerical mistake occurred, which is detailed as below:

> "In view of above discussion, it is concluded that order of removal from service with superannuation benefits, which is found proportionate to the misconduct committed by Smt. Sheela would not relate back to the date when the bank passed that order on 13.4.2007. As detailed above, in award dated 27.7.2010, the order of punishment passed by the bank was held to be non-est, being violative of the provisions of section 33(2)(b) of the Act. By way of findings recorded by the Tribunal, it does not attempt to rejuvenate that order. Resultantly the order of removal from service would come into operation from the date of the award. Therefore awarding punishment of removal from service with superannuation benefits to Smt. Sheela Devi, an award is, accordingly, passed. It be sent to the appropriate Government for publication".

2. Rule 28 of the Industrial Disputes (Central) Rules 1957 provides for correction of errors. For sake of ready reference aforesaid rule is extracted thus.

> "The Labour Court Tribunal, National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues".

3. Clerical error can be defined as an error in a document which can only by explained by considering it to be a slip or mistake of the party preparing or copying it. Literally an error is said to be "clerical" where it is made by a clerk or some subordinate agent, but actually it means an error committed it the performance of clerical work, whether by the Court the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion Clerical error is in the nature of an inadvertent omission or mistake. The term "clerical error" which is amendable nunc pro tunc is distinguishable from a "judicial error" which can be corrected only on review or an appeal. Reference can be made to precedents in Rosamma Punnose (AIR 1958 Ker. 154) and Mansha Ram L. Jagdish Rai (AIR 1962 Punj. 110).

4. Accidental slip occurs when something is wrongly put in by an accident and an accidental omission occurs when something is left out by accident. The expression "accidental slip" as occurring in section 152 (new) of the Cofe of Civil Procedure was construed by the Federal Court in Sachindara Nath Kolya (5 DLP 68), wherein it was observed as a follows:

"It needs to be stressed that the keyword in the relevant phrase is "accidental" and it qualifies "omission" also, with the result that the procedure provided by section cannot be used to correct omission, however erroneous, which are intentional, not indeed in the sense of conscious choice, for no court, is supposed to commit an error knowing it to be such, but in the sense that the Court meant not to omit what was omitted".

5. Apex Court in Tulsipur Sugar Company Ltd. [1969 (2) SCC 100] had occasion to consider correctional jurisdiction of the Labour Court constituted under the UP Industrial Disputes Act, 1947. In that precedent the Apex Court made reference to the provisions of Section 152 of the Code of Civil Procedure and rule 28 of the Rules and announced that power of correction of error is a limited one, which can be exercised only to cases where mistake, clerical or arithmetical or an error arising from an accidental slip or omission had occurred. It was ruled therein that this power is limited only to cases where clerical or arithmetical mistake or errors arising from an accidental slip or omission have occurred.

6. After ascertaining the scope of powers of correction of errors available to this Tribunal, now it would be ascertained as to whether mention of "Therefore awarding punishment of removal from service with superannuation benefits to Smt. Sheela Devi, an award is, accordingly passed", was a conscious act of the Tribunal. Answer lies in negative. It was recorded on account of accidental mistake. This Tribunal has power to correct the accidental mistake. Accordingly, it is ordered that last sentence of the award recorded as "Therefore, awarding punishment of removal from service with superannuation benefits to Smt. Sheela Devi an award is, accordingly, passed", may be read as "Therefore, punishment of removal from service with superannuation benefits to Smt. Sheela Devi would operate from the date of the award, that is 31.08.2012. An award is, accordingly, passed". Ordered accordingly. The appropriate Government may be communicated of correction, so made in the award, for publication.

Dated : 17.02.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 978.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पालावान ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 91/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/2/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/78/2011-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 978.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industiral Dispute between the management of Pallavan Gramin Bank and their workmen, received by the Central Govenrment on 27/02/2014.

[No. L-12012/78/2011-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 14th February, 2014

Present : K. P. PRASANNA KUMAR, Presiding Officer

Industrial Dispute No. 91/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Pallavan Gramin Bank and their workman]

BETWEEN

Sri R. Kumar	:	1st Party/Petitioner
AND		
The Chairman Pallavan Grama Bank, Head Office No. 6, Yercaud Road, Hasthamaptti Salem-636007	:	2nd Party/Respondent

Appearance:

For the 1st Party/ Petitioner	:	M/s. K.M. Ramesh, K.G. Vipra Narayanan, Advocates
For the 2nd Party/ Management	:	M/s. L. Jayakumar & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-12012/78/2011-IR(B-I) dated 22.11.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Pallavan Grama Bank, Sulagiri Branch at Dharmapuri in imposing the penalty of removal from service on

Sri. R. Kumar, ex-clerk/cashier vide their order dated 03.01.2009, is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 91/2011 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively. The petitioner has filed rejoinder after the Counter Statement was filed.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of Adhiyaman Grama Bank in 1988 as Clerk/Cashier. He had been discharging his duties efficiently and sincerely without giving room for any complaint. While he was working as Clerk/Cashier in Sulagiri Branch, a memo dated 18.09.2007 was issued to him alleging irregularity regarding short credit of Rs. 1000. The petitioner had submitted his reply to the said memo. The Bank had issued another memo dated 23.11.2007 alleging the very same irregularities. The petitioner has given a reply to this also. After this, the Respondent had issued a Charge sheet dated 19.12.2007 to the petitioner alleging that on 03.9.2007 he had short accounted an amount of Rs. 1,000 remitted to SB A/c No. 4803 and had misappropriated this said Rs. 1,000 and that he had failed to report any excess cash while closing the cash for the day. Even before the petitioner could submit his explanation to the Charge Memo, an Enquiry Officer was appointed to enquire into the charges against the petitioner. The enquiry was into conducted in a fair and proper manner. The petitioner was not permitted to peruse the documents produced. On conclusion of the enquiry a report was submitted with a finding that the charges are established. The Disciplinary Authority after issuing a show Cause Notice to the petitioner imposed the Punishment of removal from service without disqualification for future employment against the petitioner. The petitioner had preferred an appeal to the Board of Directors of the Respondent against the punishment imposed on him. The appeal was rejected. Thereafter, the petitioner had raised the dispute. The petitioner had not committed the misappropriation alleged. In the branch wherein the petitioner was working at the time of the alleged incident power failure was usual. On such occasions, their would not be sufficient light at the Cash Counter. At the opening time of business hours, several persons will be throning in front of the counter. The case of the Respondent is that even though as per the Challan the amount to be remitted was Rs. 3,500, the petitioner had entered Rs. 2,500 only as the amount received and misappropriate the amount of Rs. 1,000. In all probability the petitioner might have received 5 notes of 500 Rupee denomination and on counting he might have punched Rs. 2,500/- in the amount column and 500 x 5 into the denomination column. One the impression that challan amount would be Rs. 2,500, he might have mechanically affixed the stamp and his initial. This might have happened because of insufficient light. The petitioner had not verified the entries in the remittance challan. The denomination details entered were of the amount actually received. In the absence of receipt of any excess cash there was no occasion for the petitioner to report about any excess to the Manager. The cash had tallied at the close of the day. The findings of the Enquiry Officer is not based on the evidence available. The punishment imposed on the petitioner is illegal and without any justification. An order may be passed directing the Respondent to reinstate the petitioner in service with continuity of service, back wages and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent came into being in the year 2006 by merger of Adhiyaman Grama Bank and Vallalar Grama Bank. The petitioner was working as Clerk/Cashier in the Respondent Bank. All the allegations made in the Claim Statement are incorrect. The Respondent had called an explanation from the petitioner by letter dated 18.09.2007 and issued Show Cause Notice to him on 23.11.2007 for the misconduct of misappropriation of Rs. 1,000 from SB A/c No. 4803. Since the reply given by the petitioner was not satisfactory, Charge Sheet was issued to him alleging misconduct of misappropriation. It is incorrect to allege that the petitioner was not given opportunity to give reply to the Charge Sheet. An enquiry was conducted on the charges alleged against the petitioner. The charges having been found proved the punishment of removal from service was imposed on the petitioner. The petitioner is not entitled to any relief.

5. In the rejoinder filed by the petitioner in reply to the Counter Statement he has reiterated the case in the petition and also denied the allegations made in the Counter Statement.

6. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and the documents marked as Ext.W1 to Ext.W23. No evidence was adduced on the side of the Respondent.

7. The points for considerations are :

(i) Whether the action of the Respondent in imposing the penalty of removal from service on the petitioner is legal and proper?

(ii) What is the relief to which the petitioner is entitled?

The Points

8. The petitioner had admittedly joined the service of Adhiyaman Grama Bank in the year 1988. The Respondent Bank had come into being of amalgamation of Adhiyaman

Grama Bank and Vallalar Grama Bank, in the year 2006. Consequently the petitioner who was earlier an employee of Adhiyaman Grama Bank had become the employee of the Respondent Bank. At the time of the incident he was working in Sulagiri branch of the Bank as Clerk/Casher.

9. The incident which resulted in the removal of the peitioner from service had occurred on 03.09.2007. MW2 examined in the enquiry was holding SB A/c No. 4803 in Shulagiri Branch in which the petitioner was working. According to the Respondent on this date Rs. 3,500 had been brought to the Bank for remittance with challan for the said amount. The allegation is that though MW1 in the enquiry had approached the petitioner and had entrusted Rs. 3,500 to him for remittance to the account, he had remitted Rs. 2,500 only thus short crediting Rs. 1,000 and had misappropriated the said amount.

10. The petitioner is not disputing the case that the challan showed Rs. 3,500 itself. According to him, because of insufficient light and also because several customers were waiting at the bank even at the beginning of the business he might have counted the amount that was entrusted with him by MW1 without verifying the entry in the challan and the mistake might have occurred in this manner. According to him, only 5 notes of Rs. 500 denomination amounting to Rs. 2,500 might have been entrusted with him by MW1. The difference in the challan and the entry made by him is only because he had committed the folly of omitting to verify the challan resulting in his making an entry of the amount that was entrusted to him by MW1. Even though the petitioner was asked to make good the amount by remitting Rs. 1,000 to the credit of A/c No. 4803, he had refused to do so initially based on his stand that he had not misappropriated any amount. However subsequently he has remitted the amount. According to him he had not remitted the amount initially on the apprehension that it would be interpreted as admission of misappropriation on his part.

11. It has been argued by the Counsel for the petitioner that the evidence available in the enquiry is not sufficient to prove the charge of misappropriation alleged against the petitioner. The Enquiry Officer had examined MW1 who had been to the bank to remit the amount and also MW2 in whose name is the account and had entrusted the amount with MW1 for remittance. The Management had marked the cash remittance challan of Rs. 3,500 and counterfoil of the same in the enquiry proceedings. The letter written by MW1 to the bank regarding the short accounting, letter by MW2 complaining the short accounting and also other documents in the office of MW2 to prove remittance of Rs. 3,500 at the bank on 03.09.2007 are also produced.

12. Though in the Claim Statement, the petitioner has questioned the fairness of the enquiry also, the counsel for the petitioner has made endorsement stating that he is not pursuing with the issue regarding fairness of enquiry. This amounts to admission on the part of the petitioner that enquiry was conducted in a fair and proper manner and that he has been given sufficient opportunity to defend his case.

13. The question to be considered is whether the oral and documentary evidence tendered in the enquiry is sufficient to establish that it is a case where the petitioner had deliberately and intentionally short credited Rs. 1,000 to the SB A/c No. 4803 and misappropriated the amount of Rs. 1,000. The witnesses brought in by the Management, as stated, are MWs 1 and 2. These witnesses have given evidence in Tamil. An English version of their deposition has been furnished to me. Account No. 4803 in the Bank in the name of MW2 seems to be in her capacity as the Animator of Mahalir Manram. MW1 is a member of the Manram. MW1 has stated that she had been to the Bank to deposit the money on 03.09.2007. In answer to the question by the Presenting Officer how much money she has deposited, she had answered that she has deposited money as per two challans as written by IVDP Office. When she was asked how much amount was shown in the two challans, she has replied that it was as per TV challan and Savings challan. She was again asked how much amount was deposited in TV challan and she has replied that she had deposited amount as written by IVDP Office. When she was asked about the letter written by her to the Bank Manager stating that she has deposited Rs. 3,500, she stated that when she was asked how much money was deposited she had informed that it was Rs. 3,500 and that the one who had questioned her had obtained her signature also. When she was asked about the denomination of notes she had remitted she had answered that she could not say. She then stated that she was told that it was Rs. 3,500/-. The Presenting Officer again asked her if she had counted the money she received for remittance. Then she answered that they themselves had counted and given the challan. During cross-examination by the defence representative the witness has stated that she did not see how much was the amount in the challan, that she had deposited the money that was given to her from the office and had not seen it.

14. What is to be deciphered from the evidence of MW1 is that she was only a carrier of the amount entrusted with her from the office of MW2. She does not seem to have verified what is the amount written in the challan and what was the amount that was entrusted with her. She merely took the money to the petitioner who was at the counter. It is the case of the petitioner that he might have received only Rs. 2,500/- that he might have made the entries in the records by counting the amount without verifying the challan. According to him, he had presumed that the amount in the challan would be the amount that was entrusted with him. When MW1 who had handed over the amount to the petitioner herself is not very specific about

the amount that has been given there is certainly probability that she received only Rs. 2,500/- from the office or she handed over only Rs. 2,500/- to the petitioner. MW1 seems to have been not very vigilant either at the time of receiving the amount from the office or at the time of entrusting the amount to the petitioner. She has stated that she had merely deposited the amount that was entrusted with her and had no occasion to verify it.

15. What is the evidence given by MW2? She is the one in-charge of IVDP office of Sulagiri branch. When she was asked how she deposits the money of women's group in the bank, she has stated that her office collects the money and makes entry in the Resolution Register with denomination of the notes. When they are back to the office, they verify the challan and accounts and will send it to the Bank. She has stated that on 03.09.2007 she had given a letter to the Bank stating that Rs. 1,000/- had been short remitted. She used to receive printout of the account once in a week. On checking the printout she noticed that Rs. 2,500/- only has come into the account instead of Rs. 3,500/-. She had informed the bank, on noticing this. During cross-examination she has stated that the Manager had asked the Cashier about it and the Cashier had informed that there was no excess money and had offered to verify again. It could be seen that the evidence of MW2 is only on the basis that challan is for Rs. 3,500/-. When she noticed that rather than Rs. 3,500/-, only Rs. 2,500/- has come to the account, she had informed the bank about it. She had not stated during her examination that she is the one who entrusted the amount with MW1. She had not been to the Bank on the date of the incident. She does not know what transpired at the Bank on that day. The only person who could have made assertion on the actual amount that was remitted was MW1. However, her evidence in this respect is very vague and unconvincing, as already discussed.

16. The Enquiry Officer has entered a finding against the petitioner mainly on the basis that the challan is for Rs. 3,500/- and in that case the amount entrusted with the petitioner must have been Rs. 3,500/- itself. In fact even from the finding entered by the Enquiry Officer what is seen is that he himself did not find a case of misappropriation against the petitioner. He was finding fault with the petitioner for his dereliction from duty. He has quoted the admission by the petitioner that ''he used to affix the seal on the challan and on the counter foil hoping that it would tally with the amount received'' and has stated that it is a direct admission of unhealthy practice followed by the petitioner which amounts to a dereliction of duty. The Enquiry Officer has observed that the petitioner is expected to verify the cash received from the parties by ensuring its correctness and that any act other than normal procedure is violative of the rules, that procedures expected to be obeyed. Nowhere in his except the concluding portion after discussion of Charge 1, he has stated that there is misapporpriation by the petitioner. However, on this aspect there is no discussion of any kind, in the report. The only conclusion he has arrived at by analyzing the events is that it was a case of the petitioner not following the procedure correctly and properly.

17. What is the legal position regarding cases where a delinguent is facing the charge of misappropriation? As early as 1964, as held in the UNION OF INDIA Vs. GOEL reported in AIR SC 364, the Apex Court has held that the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished applies as much to regular criminal trial as to disciplinary enquiries held under the statutory rules. This dictum has been followed by the Apex Court in the decision N.K. PRASAD VS. STATE OF BIHAR AND OTHERS reported in 1978 2 LLJ 84 also. Here it was held that suspicion cannot be allowd to take the place of proof even in domestic enquiries s and that the principle that in punishing the guilty scrcupulous care must be taken to see that the innoncent are not punished, applied as much to regular criminal trials as to disciplinary enquiries held under the statutory rules also. This principle has been followed in the decisions of the Madras High Court reported in 1985 1 LLJ 46 and 1995 1 LLJ 193 also.

18. What is to be seen is that there is no clinching or convincing evidence regarding the malafide intention of the petitioner of misappropriating the amount. Only because there was a shortage of Rs. 1,000/- when remittance was entered, guilt was cast on the petitioner. It is based on probabilities only that the Enquiry Officer has entered into such a finding.

19. When the circumstances are considered it could be seen that the petitioner deserved to have been treated in a better manner. The man had entered service of the Bank in 1988. The incident is in 2007, after almost 20 years of his service with the Respondent Bank and its predecessor. There is no case for the Management that petitioner who was working as Shroff, who was dealing with lakhs of rupees daily was ever under even a shadow of suspcion. It is in fact too much to presume that the petitioner would have thought of risking his own career by attempting to pilfer an amount of Rs. 1,000/- from the account of a women's group. It would not have given him any gain. Rather he must have been aware that such act would cost him a lot. One cannot think that the petitioner would have resorted to such an act deliberately and intentionally in spite of his awareness of all such adverse consequences. The paltry amount involved itself probabilises shows absence of any malafides in the whole incident.

20. An incident which had occurred on 05.09.2007 would show that the petitioner is not a person who

would have used an opportunity to make gain on himself by pocketing the amount obtained from a customer of the bank. The petitioner has started that on this day excess amount of Rs. 1,000/- has been remitted by a customer and that this amount has been returned by the petitioner. MW2 has stated during her examination that on 05.09.2007 one of the women's group have inadvertently paid Rs. 1,000/- in excess. The amount was towards an advance for TV loan and has not been shown in the challan. As pointed out by the petitioner another challan was filled and the amount was deposited. The Enquiry Officer has taken note of this fact but has refused to consider its relevance. What he has stated is that he is not conisdering the above reported incident as an act of honesty on the part of the petitioner and points out to his integrity. In fact the incident had taken place on the day immediately after the date on which the alleged misappropiration has taken place. At the time it was not even noticed that there is difference in the amount shown in the challan and the amount entered by the petitioner as remittance. The petitioner had pointed out to the customer that excess amount of Rs. 1,000/- is there and had taken seps to see that this amount is also brought to the account. This is nothing but an act of honesty on the part of the petitioner. This will certainly speak about the character of the petitioner. When this is considered alongwith the absence of any complaint against the petitioner earlier in the service, it could be seen that he could not have attempted misappropriation as alleged by the Management. It was merely based on suspicion arising out of probabilities, the petitioner was found guilty of the charge of misappropriation. This finding will not stand the test of law when considered in the light of judicial pronouncements on the subject.

21. Other charges against the petitioner are that he had not reported any excess cash received by him while closing the cash on 03.09.2007, had not heeded to the repeated request made by the Branch Manager to remit the amount short accounted by him and that in spite of instruction given by the Manager to give a letter stating reasons for agreeing to remit the disputed amount, he did not obey. These three charges flow from the fist charge of misappropriation and have no separate existence. When the charge of misappropriation is found against, these charges also are to go.

22. The only fault that could be attributed against the petitioner without doubt is that he failed to verify the challan while making the entries regarding remittance. This certainly is an inadvertence or omission on the part of the petitioner which amounts to dereliction of duty. However, by now the petitioner has been sufficiently punished for his dereliction. He had to go without his job all these years after he was removed from service. So, I am not proposing to impose any penalty on the petitioner for his dereliction. The petitioner is entitled to be reinstated in service. Considering the circumstances, I am inclined to allow him 25% of the back wages.

23. In view of my discussion, the Respondent is directed to renstate the petitioner in service with 25% back wages and other benefits in proportion, with continuity of service and all other attendant benefits. The petitioner will be entitled to interest @ 9% per annum on the amount payable to him, from the date of publication of the award.

The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14th February, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : WW1, Sri. R. Kumar

For the 2nd Party/Management : None

Documents Marked
On the petitioner's side

Ex. No.	Date	Desrciption
Ex. W1	18.09.2007	Memo issued to the First Party
Ex. W2	01.10.2007	First Party's reply to the Memo
Ex. W3	23.11.2007	Show Cause Notice issued to the First Party
Ex. W4	11.12.2007	First Party's explanation/reply to the Show Cause Notice
Ex. W5	19.12.2007	Charge Sheet issued to the First Party
Ex. W6	29.01.2008 to 16.05.2008	Enquiry Proceedings
Ex. W7	-	Defence summing statement submitted to the Enquiry Office on behalf of the First Party
Ex. W8	20.10.2008	Letter from the Second Party enclosing enquiry findings
Ex. W9	14.10.2008	Findings of the Enquiry Officer
Ex. W10	31.10.2008	Letter from the Second Party of the First Party
Ex. W11	06.11.2008	First Party's comments on the enquiry findigs
Ex. W12	15.12.2008	Second Show Cause Notice issued by the Second Party Proposing punishment
Ex. W13	22.12.2008	First Party's reply of the Second Show Cause Notice
Ex. W14	26.12.2008	Proceedings of the personal hearning given to the first Party by the Second Party.
Ex. W15	03.01.2009	Order of removal from service issued to the First Party.
Ex. W16	14.02.2009	Letter from the First Party enclosing appeal

Ex. W17	14.02.2009	Appeal preferred by the First Party before the Board of Directors of Second Party Bank.
Ex. W18	21.02.2009	Letter from the First Party to the Second Party
Ex. W19	21.02.2009	Letter from the First Party to the Second Party
Ex. W20	16.07.2009	Letter from the Second Party communicating the decision of the Board of Directors rejecting the appeal
Ex. W21	27.10.2009	Industrial Dispute raised by the First Party before the Assistant Labour Commissioner (Central), Chennai
Ex. W22	02.03.2010	Remarks/reply filed by the Second Party before the Assistant Labour Commissioner (Central), Chennai
Ex. W23	03.12.2010	Rejoinder filed by the First Party before the Assistant Labour Commissioner (Central), Chennai

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 979.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 452/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28-2-2014 को प्राप्त हुआ था।

[सं॰ एल-12011/233/2002-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 979.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 452/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the management of Punjab National Bank and their workman, which was received by the Central Government on 28/2/2014.

[No. L-12011/233/2002-IR (B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 452/2005

Registered on 19.8.2005

The General Secretary, Punjab National Bank Workers, C/o Punjab National Bank, Outer Quilla Road, Rohtak.

...Petitioner

Versus

The Regional Manager, Punjab National Bank, (South Delhi) Region, 10th Floor, Atma Ram House, I Tolstoy Marg, New Delhi-110001.

...Respondent

APPEARANCES:

For the Workman : Sh. Manoj Sood, Adv.
For the Management : Sh. Anil Gupta, Adv.

AWARD

Passed on 8.1.2014

Central Government *vide* Notification No. L-12011/233/2002 R(B-II) dated 31.8.2003, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial disputes for adjudication to this Tribunal:—

> "Whether the action of the management of Punjab National Bank in imposing the penalty of stoppage of one increment without cumulative effect and recovery of Rs. 21,000/- upon Sh. R.K. Sethi, Clerk-cum-Cashier is legal and justified? If not, what relief the concerned workman is entitled to?"

The facts in brief are that Sh. R.K. Sethi workman while posted as Clerk-cum-Cashier, Old Faridabad, informed the Chief Manager about the missing of Rs. 50,000 from his drawer who placed him under suspension. He was charge-sheeted *vide* charge-sheet dated 20.4.1996 to which he submitted reply on 23.4.1996. His suspension order was revoked and inquiry was conducted and he was found guilty of misconduct and accordingly punishment of stoppage of one increment without cumulative effect and recovery of Rs. 50,000 as an adminstrative action was imposed.

Now according to the workman a theft of cash was due to the fact that there was a broken chair, broken drawer without lock and key, without safety alarm and this was due to failure of proper safety arrangement. According to him, the Inquiry Officer was appointed by the Regional Manager (South Delhi) Regional Office, New Delhi. That he was charge-sheeted by different authority and the Inquiry Officer was appointed by another authority which is not as per law. That the proceedings were not held as per procedure and documents were not properly proved before the Inquiry Officer who recorded finding against him. He submitted reply to the show cause notice which was not considered and even in appeal his contentions were not considered. However in appeal the penalty of recovery of Rs. 50,000 was modified to the extent of the amount

already recovered. That the order of the authorities imposing a penalty of Rs. 50,000 and stoppage of one annual grade increment without cumulative effect is bad.

The respondent bank filed written reply pleading that service conditions of the bank employees are governed by Shastri Award, Desai Award and Bipartite Settlement dated 19.10.1996 which *inter alia* provides which officer is empowered to hold the inquiry and take disciplinary action and in view of the provisions the workman was properly charge-sheeted and after conducting proper inquiry, legel penalty was imposed. That there is no procedural lapse in the conduct of the inquiry.

I have heard Sh. Manoj Sood, counsel for the workman and Sh. Anil Gupta, counsel for the management and have perused and file carefully.

There is no denial of the fact that Rs. 50,000/- were found missing from the counter of the workman on 18.4.1996. Accordingly he was charge-sheeted for doing the act prejudicial to the interest of the bank and gross negligence on his part. He submitted reply and after considering the same an inquiry was orderd which was conducted by an Inquiry Officer. The Inquiry Officer, after recording the evidence, came to the conclusion that charges are proved against the workman. After serving show cause notice on the employee, the disciplinary authority imposes a penalty of stoppage of one increment without cumulative effect in terms of para 19.6(d) of the Bipartite Settlement and also ordered for the recovery of Rs. 50,000 found missing from the cash of the workman. Though it is alleged that proper procedure was not followed in the conduct of the Inqury, but nothing has been pointed out to show that the inquiry has not been conducted as per law or the workman was prejudiced in any way in the conduct of the inquiry. Thus it is to be held that inquriy conducted was fair and proper.

However the punishment awarded is not legal. The punishing authority awarded the punishment of stoppage of one increment without cumulative effect and also ordered recovery of Rs. 50,000 found missing from his cash. A persual of the photocopies of the proceedings of the inquriy file placed on the file of this Court show that he was charge-sheeted for doing an act prejudicial to the interest of the bank and causing serious loss to the bank. When the said charge was proved, the disciplinary authority was required to award punishment for the said charge and when increment was stopped without cumulative effect, it was not right in ordering the recovery of Rs. 50,000 from the worker. In appeal the workman raised this contention and the appellate authority found in the last para of the order as follows:—

However, the contention of Sh. Sethi that the penalty of recovery should not be imposed upon him has some merit because he has also been imposed the penalty of stoppage of one increment without cumulative effect for the same misconduct. Therefore, on considering the contentions of Sh. Sethi during the personal hearing before me on 24.11.2000 I feel that the ends of justice will be met if no further recovery is made from Sh. Sethi on account of shortage of cash except the amount already recovered from him.

Thus, the appellate authority itself agreed that penalty of recovery should not have been imposed on the workman but restricted it to the amount already recovered from him. Thus, when workman was awarded punishment of stoppage of one increment without cumultative effect, imposing the penalty of recovery of Rs. 50,000 to the extent of amount already recovered from him, when the appellate authority passed the order, is not legal and valid and accordingly the punishment order *vide* which recovery of Rs. 50,000 was ordered from him is liable to be set aside and I order accordingly. However the awarding of penalty of stoppage of one increment without cumulative effect do not call for any interference.

In result, it is held that the action of the management for recovering Rs. 21000 from the workman is not legal and justified and workman is entitled to refund of the same and management would pay him the same within four months from the publication of the award failing which the management shall pay him interest at the rate of six per cent per annum from today till recovery. The workman is not entitled to any other relief. The reference is accordingly answered in the above terms. Let hard and soft copy of the award be sent to the Central Government and one copy of the award be sent to the District Judge, Rohtak for information and further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 980.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (संदर्भ संख्या 4/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 28-2-2014 को प्राप्त हुआ था।

[सं॰ एल-35011/03/2010-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 980.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 4/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial dispute between the management of Cochin Port Trust and their workman, which was received by the Central Government on 28/2/2014.

[No. L-35011/03/2010-IR (B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Friday the 19th day of July, 2013/21st Ashadha, 1935)

I.D. 4/2011

Unions : 1. The General Secretary
Cochin Port Trust Thozhilali Union
Vankitaraman Road
Willington Island
Cochin-682009

2. The General Secretary
Cochin Thuramugha Thozhilali Union
Willington Island
Cochin

3. The General Secretary
Cochin Port & Dock Employees Union
Near Port Fire Station
Willington Island
Cochin

By Advs. Shri Youseff & Smt. Aysha

Management : The Chairman
Cochin Port Trust
Willington Island
Cochin

By M/s. Menon & Pai

This case coming up for final hearing on 18-07-2013 and this Tribunal-cum-Labour Court on 19-07-2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour by its Order No. L-35011/03/2010-IR(B-II) dated 25-02-2011 referred this industrial dispute to this tribunal for adjudication.

2. The dispute is:

"Whether the action of the management of Cochin Port Trust in withdrawing a cutomary benefit hither to enjoyed by the composite workmen without proper notice is justifiable? What relief the concerned workmen are entitled to?"

3. After receipt of summons unions 1 to 3 did not enter appearance and file any claim statement. Management after entering appearance remained absent continuously on the subsequent posting dates and hence set ex-parte. Thereby an award was passed by this tribunal on 25th July, 2011. Afterwards it was set aside as per order dated 05th July, 2012 on IA 72/2011 filed by the 3rd union and on IA 93/2011 filed by the management.

4. After setting aside the award 3rd union filed claim statement alleging that in the year 1990, the Cochin Dock Labour Board merged with the Cochin Port Trust with the objective of total integration and inter-changeability of the labour force of both the agencies and accordingly an agreement was entered into on 06.06.1994 with regard to the merger of the two agencies. Afterwards the workmen under both the agencies were working as a composite gang under the Traffic Manager, Assistant Traffic Manager and Administrative Superintendent. They are dealing with the cargo of different types. The nature of the work depends upon the nature of the cargo and hence in all the cargoes it is not necessary to continuously work for eight hours. As per the existing system the workers are able to come down to the workplace and refresh themselves. Even they are allowed to go home so that they may take rest and be ready for the work in the next shift. It is a time tested system and was existing in the larger interest of the productivity and outturn of work and the interest of the management as well as the workers. The worker who completes the prescribed work within a particular time was allowed to go out so as to make the atmosphere and situation in the port more comfortable for the other workers. Clause 36 of the settlement dated 02.08.2000 which came into effect on 01.01.1997 provides protection for the existing benefits enjoyed by employees and such benefits cannot be withdrawn unilaterally by the management. The management in total violation of the aforesaid clause altered the practice hitherto followed in the cargo section unilaterally by issuing circulars under the guise of ensuring Access Control and Security in the port area. All the trade unions agreed to the introduction of Access Control System to all the sections of Cochin Port Trust except to the composite gang workers. In the meeting convened by the management on 31.01.2009 it was decided that the problems of the workers will be studied by the Chief Engineer/Traffic Manager and Heads of Departments along with the representatives of trade unions. The management assured that necessary steps would be taken to redress the grievance of those workers but nothing was done to fulfill the same. The action of the management to curtail the existing benefits of the workers in the composite gang being enjoyed by virtue of the above said settlement is arbitrary and illegal. They are entitled to enjoy all the existing benefits irrespective of the unilateral decision of the management.

5. Management filed written statement contending that Cochin Port Trust is a major port constituted under the Major Port Trust Act, 1963 and it is a public utility service as defined under Section 2(n) of the Industrial Disputes Act, 1947. The third union is representing only 35 out of the 2759 workmen in the port. The policy changes in

labour matters are finalized in Cochin Port Trust in consultation with the modality unions having a strength of at least 15%. The third union represents only a microscopic minority with 1.3% of the workmen. The Access Control System was introduced in the port w.e.f. 10.01.2009 as per the instructions of the Government of India to tighten the security arrangements in the port area. As it is necessary to prevent unregulated movements of persons the workers had to stay at the work place till the end of the shift duty in spite of the fact that there was work allotment or not. The early departure of the workmen is not an approved benefit and does not require any notice for its withdrawal. It was withdrawn after having discussion with the modality unions. Hence the withdrawal of such a practice without notice is legal and justified. So the concerned workmen are not entitled to any relief.

6. Third union did not file any rejoinder after filing the written statement. Afterwards when the case was posted for evidence the unions remained absent continuously without any representation on the several posting dates and hence set ex-parte. Management filed affidavit to prove the case put forward in the written statement that the justifiable of the stoppage of the practice of earlier departure of the workmen during duty hours is legal and justifiable. As there is nothing on record to controvert the same it can be held that the action of the management of the Cochin Port Trust is legal and justifiable.

7. In the result an award is passed finding that the action of the management in withdrawing the benefit of earlier departure of the workmen during duty hours without notice is justifiable and the workmen are not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 19th day of July, 2013.

D. SREEVALLABHAN, Presiding Officer

Appendix

Nil

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (संदर्भ सं॰ 19/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/15/2010-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 981.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 28.02.2014.

[No. L-12012/15/2010-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Tuesday the 23rd day of April, 2013/03rd Vaisakha, 1935)

ID 19/2010

Workman : Shri K. Radhakrishnan
Lakshmi Vilas
Vellakinar
Alappuzha (Kerala)
By Adv. Shri C. Anilkumar

Management : The Chairman and Managing Director
Vijaya Bank
Head Office
41/2, MG Road
Trinity Circle
Bangalore-560001
By M/s. B.S. Krishnan Associates

This case coming up for final hearing on 08.04.2013 and this Tribunal-cum-Labour Court on 23.04.2013 passed the following:

AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), the Government of India/Ministry of Labour by its Order No. L-12012/15/2010-IR(B-II) dated 16.04.2010 referred this industrial dispute for adjudication to this tribunal.

2. The dispute is:

"Whether the action of the management of Vijaya Bank in imposing the punishment of removal from the service of the bank with superannuation benefits as would be due otherwise and without disqualification from future employment on Shri K. Radhakrishnan, Special Assistant is justified? What relief the concerned workman is entitled?"

3. Workman was employed as a Special Assistant in the management bank. While he was working in the Alappuzha branch of the bank he was placed under suspension on 29.04.2005 for his alleged acts of misconduct. After having a detailed investigation chargesheet dated 29.03.2006 was issued to him. In his reply to it he denied all the seven charges levelled against him. Hence an enquiry was conducted by appointing Shri N.S. Sukumar Shetty, Chief Manager, Regional Office, Uduppi as enquiry officer. Workman had participated in the enquiry by availing the service of a defence representative. From the side of the management, four witnesses were examined as MWs 1 to 4 and MEX 1 to MEX-87 were marked. DEX 1 to DEX-12 were got marked from the side of the workman without adducing any oral evidence. After considering the evidence the enquiry officer found that five charges levelled against him were proved and the remaining two charges were not proved. After getting the enquiry report the disciplinary authority, after affording an opportunity of being heard to the workman, imposed the penalty of "removal from service of the bank with superannuation benefits as would be due otherwise and without disqualification from future employment". The appeal preferred by him challenging that order was dismissed by the appellate authority. As per the direction of the Hon'ble High Court in WP(C) No. 33202/ 2008 filed by him the appeal was again heard by the appellate authority and was disposed of *vide* order dated 30.03.2009 upholding the punishment imposed on him by the disciplinary authority. Hence he raised the industrial dispute and the same has resulted in this reference.

4. Workman after appearance before this tribunal filled claim statement in the form of a memorandum of appeal challenging the order of the appellate authority and with the prayer to set aside the order of removal from service passed against him and also for allowing him to realize the salary from 31.05.2007 onwards from the Deputy General Manager, the General Manager (Personal) and the Chairman & Managing Director arrayed as the three respondents in the claim statement. Challenge is made on the grounds that the appellate authority entered into the findings on charge No. 1 to 4 and 6 in the chargesheet without having a proper appreciation of the evidence and bindly following the order of the disciplinary authority without application of mind. The workman was found guilty of those charges after exonerating there higher officials who were chargesheeted based on the same allegations. The findings were entered into on all those charges without considering the fact that the crime registered against him by the police was referred as mistake of fact and also improperly placing reliance on the evidence of Shri R. Gopakumar who was the then Branch Manager chsrgesheeted along with him for the alleged illegal acts. The punishment imposed by the appellate authority is unjust and has no nexus with the charges alleged against him.

5. Management filed written statement denying all those grounds raised in the claim statement to challenge the findings of the appellate authority and contending that the enquiry was conducted fully in compliance with the legal procedure and without violating the principles of natural justice. Disciplinary authority proposed the punishment after carefully considering the findings of the enquiry officer and related pleadings and documents and the punishement was imposed after affording an opportunity of being hard to the workman. The appellate authority upheld the punishment imposed on him by the disciplinary authority after considering the pleadings, evidence and the submissions of the workman. There is no reason to interfere with the findings of the enquiry office with regard to the charges 1 to 4 to 6 as those findings were entered into after properly and metculously analyzing all the relevant materials, documents and pleadings. The punishment imposed on the workman is legal and proper and it is in proportion to the charges proved in the enquiry. Criminal proceedings have no bearing on the decision of the appellate authority. The proceedings in the criminal case and the domestic enquiry are on entirely different charges. No reliance was placed either by the disciplinary authority or the appellate authority on the evidence of Shri Gopakumar. There was proper appreciation of evidence by the enquiry officer, disciplinary authority and the appellate authority in entering into the findings against the workman. The punishment was imposed since the charges against him relate to gross misconduct as per the provisions of the Bipartite Settlement. The punishment imposed on him is appropriate and it does not call for any interference. Hence he is not entitled to any relief.

6. Workman did not file any rejoinder in spite of the opportunity given to him for that purpose.

7. The validity of the enquiry was considered as a preliminary issue. The copy of the enquiry file in two parts was produced by the management and the same was marked as Ext. M-1 and M-1(a) without any objection. As the enquiry report in Ext.M-1 does not contain the last page the original enquiry report was produced later and got marked as Ext. M-2. The enquiry was found to be valid as per order dated 21.11.2013. After that the case was posted for final hearing and the arguments for both sides were heard.

8. Learned counsel for the workman has submitted that the charges levelled against the workman are not specific and the findings of the enquiry officer on the various charges are perverse. It was further submitted by him that the penality imposed is not proportionate to the charges found to be proved against him.

9. Learned counsel for the management on the other hand has argued that all the findings were entered into by the enquiry officer based on evidence after having careful scrutiny and by assiging valid reasons and the same cannot

be held to be perverse. It was further submitted by him that the penalty imposed cannot be held to be shockingly disproportionate as the bank incurred huge financial loss due to the alleged misconduct of the workman.

10. The points for determination are:—

(i) Whether the findings entered into against the workman in the enquiry calls for any interference in this reference?

(ii) Whether the punishment imposed on the workman is legal and justified?

11**. Point No. 1**:—The charges under seven heads are levelled against the workman after furnishing the particulars in detail in the chargesheet. Those seven charges are as follows:—

1. Your acts of allowing cash withdrawals in the SB Accounts of the borrowers, when the said accounts were already showing debit balance due to non-payment of previous Credit Card dues and your failure to obtain the necessary authorization from the Branch Manager thereby concealing the facts from the knowledge of the higher authorities amount to doing acts prejudicial to the interest of the Bank involving serious financial loss, which constitutes gross misconduct under Sub-clause (j) of Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

2. Your acts of passing cheques in the SB Accounts of the credit card holders resulting in overdrawings, and failure obtain authorization from the Branch Manager for such overdrawings, thereby concealing the facts from the knowledge of higher authorities amount to doing acts prejudicial to the interest of the Bank involving serious financial loss which constitutes gross misconduct under sub-clause (j) of Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

3. Your acts of allowing overdrawings in the Current Account of M/s Prince Fuels and in the CC(M) account of M/s. Athira Agencies to the extent exceeding Branch Manager's delegated powers and not entering the same in the Cheque Referred Register and thereby suppressing the facts from the knowledge of the higher authorities amount to doing acts prejudicial to the interest of the Bank involving serious financial loss which constitutes gross misconduct under Sub-clause (j) of Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen datd 10.04.2002.

4. Your acts of involving in the affairs of M/s Empire Music World, run in the name of your son, which has resorted to various malpractices by swiping the Credit Cards sanctioned by the branch through the merchant establishment facility extended by the Bank to swindle Bank's money in an ingenious manner amount to doing acts prejudicial to the interest of the Bank involving serious financial loss, which constitutes gross misconduct under Sub-clause (j) of Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

5. Your acts of exclusively handling certain branch records/registers pertaining to transcations connected with M/s Empire Music World in order to facilitate smooth execution of clearing Credit Card charges slips pertaining to the said firms and to hoodwink the branch officials from noticing the malpractices/suspicious activities of M/s. Empire Music World and affording credits to the said firm amount to doing acts prejudicial to the interest of the Bank involving serious financial loss, which constitutes gross misconduct under Sub-clause (j) Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

6. Your act of using funds/proceeds of the M/s. Empire Music World for your personal purposes by transferring amounts from Current A/c No.785 of M/s. Empire Musice World to your SB A/c No. 5064 jointly held with your another son to pass the cheques issued by you and to withdraw the money which establishes your active involvement in the business activities of the said merchant establishment and authorizing such transactions personally, amount to doing acts prejudicial to the interest of the Bank involving serious financial loss and engaging in trade or business outside the scope of your duties, which constitutes gross misconduct under Sub-clause (j) and (a) Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

7. Your act of involvement in the affairs of M/s. Empire Music World, who was showing fictitious sales through credit card transactions without any purchase being made by the card holders, amounts to doing act prejudicial to the interest of the Bank involving serious loss, which constitutes gross misconduct under Sub-clause (j) of Clause 5 of the Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

12. The charges are levelled against based on the full particulars given in chargesheet. On going through it, it cannot be said that the charges are not specific or vague as submitted by the learned counsel for the workman. It is also to be noted that reply was submitted by him to the chargesheet without any such complaint. Hence the charges cannot be said to be not specific or is vague.

13. The enquiry officer found that charge Nos. 1 to 4 and 6 are proved and the remaining charges are not proved. Hence it is to be considered whether there is any reason to hold that the findings on charge Nos. 1 to 4 and 6 of the enquiry officer are perverse or it calls for any interference for the purpose of considering the proportionality of the punishment imposed on him.

14. Before considering the evidence it is to be pointed out that in disciplinary proceedings the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt like in a criminal case. If there are some relevant materials accepted by the disciplinary authority which reasonably support the conclussion that the officer is guilty it is not the function of the tribunal to review the materials and if the enquiry has been properly held, the question of adequacy of reliability of evidence cannot be canvassed before the tribunal.

15. In the decision reported in BC Chathurvedi Vs. Union of India, (1995) 6SCC749 it was held:

> "Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts the evidence and conclusion receives support there from, the diciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere, where the authority hold the proceedings against the delinquent officer in a manner inconsistent with the rules or natural justice or in violation of statutory rules prescribing the mode of enquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence, if the conclusion or findings be such as no reasonable person would have been reached, the court/tribunal may interfere with the conclusion or finding and mould the relief so as to make it appropriate to the facts of the case".

16. The jurisdiction of the tribunal to interfere with disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishement would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct the tribunal has no power to substitute its own discretion for that the authority.

17. In the decision reported in The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. & Ors. AIR-2006 SC 2208 it was held by the Apex Court that when enquiry was conducted fairly and properly in the absence any of the allegations of victimization or malafides or unfair labour practice Labour Court has no power to interfere with the punishment imposed by the management.

18. It is also to be pointed out that in Chaturvedi's case (Supra) it was held:

> "A review of the above legal position would establish that the disciplinary authority and in appeal the Appellate Authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of misconduct. The High Court/Tribunal while exercising power of judicial review cannot normally substitute its own conclusion or penalty and impose some other penalty. If the punishement imposed by the disciplinary authority or Appellate Authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief, either directly, the disciplinary/Appllate Authority to reconsider the penalty imposed, or to shorten the litigation, it may by itself, in exceptional and rare cases, impose appropriate punishment with congent reason in support threof."

19. Keeping in mind the above principles enunciated in those decisions it is to be considered whether there is any reason to interfere with the penalty imposed on the workman as it is already found that the enquiry was conducted in a fair and proper manner without violating the principles of natural justice. There is no scope for any interference with the findings of the disciplinary authority unless it is perverse or is based on no evidence. From all the seven charges levelled against the workman charge Nos. 1 to 4 and 6 are found to be proved by the enquiry officer based on documentary evidence.

20. Workman was a Special Assistant and was in charge of SB Current Account Section. At that time there was withdrawal of amounts when there debit balance in the accounts. It was because of his failure to hot list the credit cards even though those were due for hot-listing. The enquiry officer after considering MEX-63 to MEX-69 entered into the finding that charge No.1 is proved. By relying on MEX-61 and MEX-62 he found that charge No.2 is proved. By placing reliance on MEX-73 to 78 and MEX-80 to 85 the finding was entered into on charge No.3 as proved. Based on MEX-10, 11 and 14 charge No.4 is found to have been proved. Charge No.6 is found to be proved after considering MEX-50 to 53 and MEX-55 and 56.

Workman cannot be heard to say that he is to be exonerated for the reason that his higher officials who were chargesheeted were found not guilty. There is ample evidence in this case to prove that the workman has committed acts of gross misconduct inviting major penalty.

21. On a careful scrutiny of the evidence I do not find any reason to interfere with those findings of the enquiry officer which was accepted by the disciplinary authority and upheld by the appellate authority. The enquiry officer has analyzed the evidence produced in the enquiry in a rational and logical manner and entered into the findings based on relevant and acceptable evidence. Cogent reasons have been assigned by the enquiry officer in support of the findings. It is not necessary to have a detailed discussion of the evidence in the departmental enquiry by this tribunal as there is no reason to hold that the findings are perverse. The findings of the enquiry officer are based on the evidence produced during the departmental enquiry. Conclusion reached by the enquiry officer cannot be said to be in such a nature as no reasonable person would have ever reached. Hence it cannot be said that the findings of the enquiry officer are perverse. After going through the evidence I do not find any reason to interfere with the findings of the enquiry officer on the charge proved against the workman.

22. **Point No.2:-** Now it is to be considered whether the penalty imposed on the workman calls for any interference by this tribunal. So far as the proportionability of the punishment is concerned it is to be pointed out that the penalty imposed by the disciplinary authority was upheld by the appellate authority after assigning valid reasons. It is a case of gross misconduct proved against the workman in a properly conducted departmental enquiry against him.

23. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the bank has to take all possible steps to protect the interests of the bank and to discharge his duties utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. It is not a defence for him to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of a bank is depended upon each of its officers acting and operating within their allotted sphere. Acting beyond ones authority is by itself a breach of discipline and is a misconduct.

24. The punishment imposed against the workman cannot be said to be shockingly disproportionate to the proved misconduct against him. At the time of argument learned counsel for management has submitted that the workman was convicted in the criminal case against him based on the said allegations and the same is not disputed by the learned counsel for the workman. The workman was holding a position of trust where honesty and integrity are inbuilt requirements of functioning and hence the matter is to be dealt with firmly and not leniently. He was to act with highest degree of integrity and trustworthiness in the discharge of his official duties. Taking into consideration of the facts and circumstances of the case and applying the principles enunciated in the decisions cited above to this case in hand there is no scope to interfere with the punishment imposed against the workman.

25. In the result an award is passed finding that the action of the management bank in imposing the punishment of removal from service of the bank with superannuation benefits as will be otherwise due and without disqualification for future imployment is justified. Hence he is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistance, transcribed and typed by her, corrected and passed by me on this the 23rd day of April, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the workman - NIL

Witness for the management

MW1 04.11.2011 Shri N S Sukumar Shetty

Exhibits for the workman - NIL

Exhibits for the management

M1 - Copy of the enquiry file
M1(a)-Bound volume of copy of documents in the enquiry file
M2 - Original Enquiry Report

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 982.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ सं॰ 90/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/6/2002-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.90/2002 of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between

the management of Punjab National Bank and their workmen, received by the Central Government on 28/02/2014.

[No. L-12012/6/2002-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present :

Dr. Manju Nigam, Presiding Officer

I.D. No. 90/2002

Ref.No L-12012/6/2002-IR (B-II) dated: 29.04.2002

BETWEEN

Sh. Devendra Pratap Singh S/o Sh. Uma Pratap Singh
R/o 10-A, Balipur (Pandit)
Pratapgarh (UP) 230 001

AND

The Regional Manager
Punjab National Bank
Regional Office, The Mall, Varanasi Cantt
Varanasi (U.P.) 221 001

AWARD

1. By order No. L-12012/6/2002-IR (B-II) dated: 29.04.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Devendra Pratap Singh S/o Sh. Uma Pratap Singh, R/o 10-A, Balipur (Pandit), Pratapgarh (UP) and the Regional Manager, Punjab National Bank, Regional Office, The Mall, Varanasi Cantt, Varanasi (U.P.) for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF PUNJAB NATIONAL BANK IN IMPOSING THE PUNISHMENT OF COMPULSORY RETIREMENT OF SHRI DEVENDRA PRATAP SINGH W.E.F. 28.02.2001 IS LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF HE IS ENTITLED FOR?"

3. It is admitted case of the parties is that the workman, Devendera Pratap Singh, was working as clerk/cashier in the Naini branch of the bank when he was served upon a charge sheet dated 06.08.94 for alleged gross misconduct by the Regional Manager, Varanasi, the Disciplinary Authority for alleged gross misconduct of making forged signatures of authorized signatories on the fraudulent TPO and thereby causing a loss of Rs. 75,000/- to the Bank. The workman submitted his explanation to the charge sheet dated 06.08.94 and denied the charges and the management of the bank being unsatisfied with the reply of the workman instituted an domestic enquiry into the charges leveled against the workman and the enquiry officer after conducting such enquiry submitted his report before Disciplinary Authority on 10.03.99 who, after issuing show cause notice to the workman, imposed the punishment of compulsory retirement from service vide order dated 28.02.2001. Aggrieved from penalty order the workman preferred an appeal before Appellate Authority, which too was rejected.

4. It is a case of the workman is that the management conducted the enquiry proceedings in violation to the principles of natural justice. He has further alleged that the management did not provide him the documents which formed basis of its charges; also it did not provide any copy of the complaint, preliminary inquiry report, report of Hand Writing Expert, FIR and order documents. It has further been alleged that the management could not prove the charges leveled against the workman, through cogent evidence as it was not able to produce the key withnesses; hence the inquiry report of the Inquiry Officer was based on assumptions. Accordingly the workman prayed to set aside the impugned order dated 28.02.2001 with consequential benefits.

5. The management of the bank has denied the allegation of the workman with submission that the workman was afforded all reasonable opportunity to defend himself and was supplied all relevant papers etc. and the inquiry was conducted fully in accordance with the principles of natural justice. It is also submitted by the Bank that Inquiry Officer after taking into consideration the entire material on the record submitted his report dated 10.03.99 to the Disciplinary Authority, holding charges as proved; and the Disciplinary Authority after giving show cause to the workman and considering his reply to the show cause notice rightly imposed the punishment vide order dated 28.02.2001 and there is no illegality with it. Accordingly, the management of the Bank has prayed that the claim of the workman be rejected without any relief being extended to the workman.

6.The workman has filed rejoinder whereby it has only reiterated its averments in the statement of claim and has introduced nothing new.

7. The management of the Bank submitted photo copy of the entire enquiry proceedings in support of their respective case. Following preliminary issue were framed on 08.10.2002 by the Tribunal:

(i) Whether the departmental enquiry conducted by the management is in violation of the principle of natural justice? If so, its effect.

8. The workman examined himself whereas the management examined Shri Vijay Kumar, Inquiry Officer, in

support of their stand on preliminary issue. After hearing arguments of the parties, preliminary issued were decided in favour of the workman vide order dated 14.12.2009, which reads as under:

> "The departmental enquiry against the workman is vitiated as the same is in violation of principle of natural justice and perverse. Therefore, opportunity is given to the opposite party to prove the alleged charges against the workman before the Tribunal."

9. Accordingly, the case was listed on 10.02.2010 with direction to the management to file documentary evidence and list of witnesses. The management file the affidavit of one of its witness viz. Shri M.R. Singh on 28.06.2011 and cross-examined him on the next date and also, sought time to produce one more witness accordingly, 28.09.2011 was fixed for management's evidence. On 28.09.2011 the management remained absent, which led to closure of their opportunity of evidence. The workman filed its evidence on 12.10.2011 but the management again failed to cross-examine the workman and accordingly, the opportunity of the management to cross-examine the workman was closed vide order dated 11.01.2012 and next date was fixed for argument on 14.02.2012. The order dated 11.01.2012 was recalled at the written request of the authorized representative of the management and the workman was cross-examined by the authorized representative of the management, and next date i.e. 19.11.2012 was fixed for arguments.

10. The argument of the parties could not be forwarded on serveral dated at one pretext or the other and on 13.02.2013, the authorized representative of the management moved an application, M-85 to recall the order dated 28-09-2011 and to avail the management an opportunity to produced one more witness viz. Nanhu Ram to prove the charges leveled against the workman. It had been submitted the management that the proposed witness. Nanhu Ram was the custodian of the T.P.O. who issued T.P.O. Book every day to the related employees and before closure of the Bank, the same was kept by him in his custody, therefore, his evidence is very uch necessary to bring the truth before this Tribunal. The recall application was opposed by the workman even then application of the management was allowed in the interest of justice and the workman was given an opportunity to produce its witness, Nanhu Ram on 13.03.2013.

On the date fixed, 13.03.2013, the management moved an application, M-86, stating therein that the MW, Nanhu Ram has retired from Bank services in December, 1993 and has expired on 20.07.2002; and accordingly, requested to fix the next date for arguments. Accordingly, the next date i.e. 25.04.2013 was fixed for arguments.

11. Heard learned representatives of the parties and perused entire material on record.

12. The learned representative on behalf of the workman has contended that this Tribunal found the department inquiry conducted by the management of the Bank to be unfair one and accordingly vitiated the same vide order dated 14.12.2009 with opportunity to the management to prove the allegations/ charges leveled upon the workman before this Tribunal, but the management of the Bank utterly failed to do so as the Bank could not produce the key witnesses in support of its charge sheet and has examined only witness viz. Shri M.R. Singh. The workman has submitted that the workman has been charged with the allegation of making forged signatures of the authorized signatories on a T.P.O. and thereby causing loss to the Bank. He has further submitted that the workman never worked on the T.P.O. issue seat and were kept in the custody of Nanhu Ram; and also, the workman was not on duty on the date when the T.P.O. leaf was found missing. The workman has also stressed that Nanhu Ram neither appeared in the domestic inquiry nor before this Tribunal to make a statement that he has not made signatures on T.P.O. under question. The authorized representative of the workman has contended that the workman was neither concerned with the T.P.O. work at all nor did he issue T.P.O. in the Robertsganj branch. Moreover, it is submitted that Shri Yashwant Pal Singh, clerk was entrusted with preparation of T.P.O. and Shri M.R. singh and Nanhu Ram were required to put their signatures on it; and also, the preliminary report submitted by Shri J.P. Banarwal and Shri Amarjeet Singh does not find his name nor he has been held responsible for the misdeed. It is also contended that the Hand Writing Expert submitted his report without examining the signatures from the specimen signature of authorized signature, hence the report of the Hand Writing Expert could not be relief upon.

13. Per contra, the learned representative on behalf of the Bank has urged that a leaf of T.P.O. was lost in the month of April, 1987 from the custody of the custodian, Shri Nanhu Ram, Assistance Manager. It has been contended by the management that the workman procured the said T.P.O. form and by manipulating forged signatures of authorized signatories, cause a loss of Rs. 75,000/- to the Bank. The management has contended that the management witness, Shri M.R. Singh the then Branch Manager has well deposed the matter and has well proved that the workman misused the T.P.O. by putting forged signatures of the authorized signatories, which was established in the report of the Hand Writing Expert; who reported that the alleged forged signatures were in the hand writing of the workman. Thus, there was no infirmity with the impugned order of the Disciplinary Authority dated 28.02.2001. The management has relied on Managing Director, United commercial Bank vs. Pc. Kakkar AIR 2003 SC 1571 and Damoh Panna Sagar Rural Regional Bank vs Munna Lal Jain AIR 2005 SC 584.

14. I have given my thoughtful consideration to the rival submission of the parties and scanned entire evidence on reocrd in light thereof.

15. From pleadings of the parties it comes out that the workman, Devendera Pratap Singh was charged with making forged signatures of the authorized signatories, which resulted into a loss of Rs. 75,000/- to the Bank The management of the Bank conducted a preliminary inquiry into the matter under Shri J.P. Baranwal and Shri J.D. Singh, who submitted their report dated 22.12.1987 to the management. Thereafter, the management served upon the workman the charge sheet dated 06.08.94 and on receipt of reply of the workman to the charges, the management decided to initiate a domestic inquiry into the charges leveled upon the workman. During the inquiry the management relied upon the evidence of Shri M.R. Singh, Branch Manager and Shri S.I.H. Taj, the Hand Writing Expert, who submitted his report in respect of the alleged forged signatures. The Inquiry Officer has given his inquiry report as the charges to be found proved, replying upon the evidence of Mr. M.R. Singh, Branch Manager and Shri S.I.H. Taj, Hand Writing Expert. Shri S.I.H. Taj, Hand Writing Expert, who was not produced before this Tribunal, by the management, in order to prove the charges, before this Tribunjal, has admitted/stated during his cross-examination before the domestic inquiry that "he has not seen the original signature which is available on page No. 10487 of the specimen signature book". It is also evident from the material available on record that the management's hand writing expert had to examine as the whether the signatures available in the TPO under question is of Sh. M.R. Singh and Sh. Nanhu Ram or the signatures of Shri M.R. Singh and Nanhu Ram were made by some other employee of the Bank. In this regard the specimen signature of Shri M.R. Singh, Sh. Nanhu Ram and five over employees viz. Ravindra Kumar Singh, indra Kumar Singh, Devendra pratap Singh, Krishan Mohan Lal and Ashok, were provided to the Hand Writing Expert. But the Expert was not provided with the specimen signatures of the authorized signatories from the Specimen Signature Book, available in the bank. hence, the report of the Hand Writing Expert which was not based on the signatures of Shri M.R. Singh, Sh. Nanhu Ram, available in Specimen Signatures Book, could not be replied upon, inasmuch as the management has not produced him before this Tribunal for cross-examination.

16.The other two key witnesses from the management's point of view could be Shri M.R. Singh, Sh. Nanhu Ram; but the management did not bother to produced both of them in evidence. The management has preferred Shri M.R. Singh, the then Branch Manager in support of the charges. It is pertinent to mention here that Shri Nanhu Ram was the custodian of the TPO in question and was also one of the authorized signatories of the TPO. Had Shri Nanhu Ram was produced in evidence then he could have well deposed that as when the TPO was found missing and also that he could have denied his signatures on the TPO; but this could not be done due his non-appearance before the inquiry *i.e.* domestic as well as before this Tribunal. However, the management was directed with order dated 14.12.2009 to file list of witnesses but it preferred to produced only Mr. M.R. Singh in support of their charges and when it decided to adduce Shri Nanhu Ram was very late, Shri Nanhu Ram had been reported to be died on 20.07.2002.

The management witness who appeared before this Tribunal, Shri M.R. Singh, the then Branch Manager, stated in his cross-exmination that the workman, D.P. Singh was not on duty on the day, when the TPO leaf was lost. He further stated that TPO were in custody of Shri Nanhu Ram. Asstt. Manageer who used to give the same to the clerk, issuing TPO in the morning and the concerned clerk after whole day of working used to return the same to the custodian and entrty in this regard were made on prescribed register. He also stated that on return the TPO were used to get verified and discrepancy, if any, could be traced out the same day. He could not recall the detail of duty assigned to the workman. It was further stated that the custodian of TPO, Nanhu Ram informed his about the loss of TPO on 25.04.87 and also admitted that the payment was made against lost TPO in Bulanala Branch on 11.04.87. It was also stated that he has no knowledge as to whether the TPO book was ever given to the workman, D.P. Singh to issue the TPO; he further stated that in this regard the TPO in charge can make statement. However, the management could not produce the TPO in charge, Shri Nanhu Ram, Asstt. Manager neither before inquiry nor this Tribunal due to his death on 20.07.2002.

In rebuttal, the workman has stated, in cross-examination that in the Robertsganj branch of the bank he was allotted work regarding tallying balance, maintaining current account and look after saving counter. He also stated that in the Branch Shri Yashwant Pal, Clerk had power to issue TPO. He also stated that the Hand Writing Expert, arranged by the bank, was not provided with the Signature Authorized book, which was kept by the Assistance Manager. Moreover he made available the Signature Authorized Book to the Hand Writing Expert, arranged by him, who reported the signatures on the disputed TPO were of Nanhu Ram and M.R. Singh.

17. From the evidence available on record, it is very much apparent that the custodian of the TPO *i.e.* Shri Nanhu Ram, Assistance Manager reported the Manager of the branch, Shri M.R. Singh about the loss/missing of the TPO in quesiton on 25.04.87; whereas as per statement of the MW, Shri M.R. Singh the said TPO was used on 11.04.87. Also the MW has stated that as per procedure, the TPO book was given to the TPO issuing clerk in the morning and was returned back in the evening after making entries on a prescribed register and any discrepancy in the TPO

book could be found out on verification of the TPO number or leaves, then how the missuse of the TPO could not be reported before 11.04.87 is an unanswere question, which could have well answered by the custodian of the TPO book, Shri Nanhu Ram, Asstt. Manager; but; but the management did not prefer to produce the custodian of TPO book before the domestic inquiry for the reasons best known to the management. However, the management tended to produced Shri Nanhu Ram before this Tribunal at a very belated stage in the year 2013; but could not do so due his death on 20.07.2002.

In this regard it is noteworthy that the that this Tribunal after vitiating the domestic inquiry, conducted by the management into the charges leveled upon the workman, vide order dated 14.12.2009, directed the management to file list of witnesses on 10.02.2010; but the management did not bother to file the list of witnesses rather it took alost one and half year to present its first witness that too was after passing ex-parte order, closing opportunity to lead evidence. The mangement sought time to produce its second witness, Shri Nanhu Ram at a very late stage; but did not produce him, which again led to ex-parte against the opposite party. The management again got the order of ex-parte recalled and sought time to produce Shri Nanhu Ram; who was the custodian of the TPO; but for more than four years the management could not produce its employees *i.e.* Shri Nanhu Ram who was the best witness to unveil the controversy as to how and when the TPO under question were found missing/lost and whether the alleged forged signatures on the lost TPO were of his or not. It is very late stage, application to the effect has been moved that Shri Nanhu Ram has died on 20.07.2002. Thus the management lingered the matter for four years but could produce the key witness to prove the charges leveled upon the workman.

Further the management charged the workman to having forged the signatures of the authorized signatories on the TPO and for this it arranged a Hand Writing Expert and relying on the report of the said Hand Writing Expert, which was against the workman, penalized the workman; but it is pointed out that the specimen signatures of the authorized signatories were not provided to the Expert from the Signature Authorized Book, available in the each branch of the bank. The management could not forward any genuine explanation to this flaw as to why they did not provide the Hand Writing Expert, the Signature Authorized Book, which was meant only for ascertaining the genuineness of the signatures. On the contrary the Hand Writing Expert, arranged by the workman, was provided with the specimen signatures of the authorized signatories from the Signature Authorized Book, who reported that the alleged signature were of Shri nanhu Ram and Shri M.R. Singh.

When the domestic inquiry, conducted by the management was vitiated, it was incumbent upon the management to come forward with the fresh evidence in support of its charges. It was required from the management to come with the Hand Writing Expert to examine the disputed signatures of the authorized signatories on the forged TPO with those in the Signature Authorized Book; but it utterly failed to get the signatures of the authorized signatories examined before this tribunal. secondly, it could not bring the custodian of the TPO before this Tribunal to state that circumstances under which the TPO under question was lost form his custody. Had he been produced before domestic inquiry then in the even to his death his evidence before the domestic inquiry could have taken into account. Hence, the management of the Bank failed to discharge the burden that lied upon it to prove the charges before this Court. On the contrary the workman has well proved that hge was neither custodian of the TPO book nor he was given duty of preparation of the TPO nor he was on duty on the day when the TPO leaf was reported to be lost. This goes to show that the workman had no chance to prepare a forged TPO at any point of time.

18. Thus, in view of the facts and circumstances of the case and discussions made hereinabove. I am of the considered opinion that the management of the Punjab National bank failed to prove the charges before this Tribunal regarding alleged involvement of the workman of making foreged signatures of the authorized signatories on the TPO under question and thereby causing loss to the Bank. Hence, I come to the conclusion that the action of the management of punjab national bank in imposing the punishment of compulsory retirement of Shri Devendera pratap Singh w.e.f. 28.02.2001 is neither legal nor justified; and accordingly, the workman, Devendera Pratap Singh is entitled for reinstatement with consequential benefits including continuity in service and full back wages within six weeks from the date of publication of this award in the gazette. The reference is answered accordingly.

19. Award as above.

Lucknow
20th January, 2014

DR. MANJU NIGAM, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चण्डीगढ़ के पंचाट (संदर्भ सं॰ 243/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/84/2011-आई आर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 243/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No II, Chandigarh as shown in the Annexure in the Industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 28/02/2014.

[No. L-12011/84/2011-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. 243/2012

Registered on 27.7.2012

The District Secretary, PNB Staff Union (Regd), Central Office, PNB Branch Office, Chaura Bazar, Ludhiana.

...Petitioner

Versus

1. The Chairman-cum-Managing Director Punjab National Bank, Head Office, Bhikaji Cama Place, New Delhi.
2. The Circle Head, Punjab National Bank, Circle Office, Chandigarh Circle, Bank Square, Sector 17B, Chandigarh.

...Respondents

APPEARANCES:

For the Workman : Ex parte.

For the Management : Ex parte.

AWARD

Passed on 19.12.2013

Central Government *vide* Notification No. L-12011/84/2011-IR(B-II) dated 23.5.2012, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of the Chairman-cum-Managing Director Punjab National Bank (PNB), Head Office, Bhikaji Cama Place, New Delhi & Circle Head, PNB, Circle Office, Chandigarh Circle, Bank Square, Sector 17B, Chandigarh in inflicting punishment of 'CENSURE' and not paying the full salary of suspension period to Sh. Ram Kishore Sharma, Steno/Typist is just, valid and legal? What relief the workman is entitled to?"

Notice was given to the representative of the workman through registered cover who did not appear and was proceeded against ex parte *vide* separate order of today. Similarly, none appeared on behalf of management and it was also proceeded against ex parte. Since the workman or his authorized representative did not appear did not submit any statement of claim, the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 984.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ सं॰ 1201/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/69/2005-आई आर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1201/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No II, Chandigarh as shown in the Annexure in the Industrial dispute between the management of Punjab and Sind Bank and their workmen, received by the Central Government on 28.02.2014.

[No. L-12012/69/2005-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No. I.D. 1201/2005

Registered on 3.10.2005

Sh. Balwinder Singh, S/o Sh. Kashmir Singh, R/o Village Dholpur, Post-Talwandi Lal Singh, Batala, Punjab.

...Petitioner

Versus

The Deputy General Manager (P), Punjab and Sind Bank, Head Office, Personnel Department, 21, Rajinder Place, New Delhi.

...Respondent

APPEARANCES:

For the Workman : Sh. R.P. Rana, Adv.

For the Management : Sh. Sapan Dhir, Adv.

AWARD

Passed on 3.2.2014

Central Government *vide* Notification No. L-12012/69/2005-IR(B-II) dated 30.8.2005, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Balwinder Singh, Ex-Peon w.e.f. 1.2.2002 without complying with the provisions of Secton 25F, G and H of the ID Act, 1947 is legal and justified? If not, to what releif the concerned workman is entitled to and from which date?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was engaged as Temporary Peon paying initial pay scale+DA+HRA w.e.f. 19.8.1989 by the respondent bank and he worked in three branches from 19.8.1989 to 31.1.2002. His services were terminated by the Branch Manager on 1.2.2002 without serving him any notice or paying him compensation and in violation of Section 25F of the Act. That the management also violated Section 25G and 25H of the Act and being so, his termination is illegal and he is entitled to be reinstated with continuity of service and back wages.

Respondent management admitted that the workman was engaged as temporary peon purely on temporary basis to meet the contingencies and he did not complete 240 days of service in a one calendar year. That respondent management is a statutory body having its rules and regulations and the appointment of the workman was not made as per the said rules and therefore his appointment is illegal. That the workman is making effort to enter into bank through backdoor which cannot be allowed. That it is the Zonal Manager who can appoint a person and the Branch Manager has no authority to appoint a Peon. Since no appointment letter was issued and the workman was not properly appointed, there is no violation of any provision of law.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management has examined Sh. Ramesh Kumar who supported the case of the respondent management as set out in the written statement.

I have heard Sh. R.P. Rana, counsel for the workman and Sh. Sapan Dhir, counsel for the management.

It is the admitted case that the workman was employed as a temporary Peon on 19.8.1989 and he worked up to 31.1.2002. Though, it is pleaded by the management that breaks were given in the service but no cogent evidence has been produced to prove this fact. Rather Ramesh Kumar who was examined by the management admitted that he did not calculate the number of working days during the period from 1.2.2001 to 31.1.2002. Thus, there is absolutely no evidence that there was any break in the service of the workman.

It is again admitted case that no compensation was paid to the workman when his services were terminated. The workman was entitled to the protection of Section 25F of the Act, even though his appointment was not legal and valid. Since the management did not comply with the provisions of Section 25F which read as follow:-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay (for every completed year of continuous serivce) any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate government by notification in the Official Gazette.)

the termination of the services of the workman are to be held to be not legal and he is entitled to reinstatement.

In similar cases and against the present respondent management, a writ petition No. 1854 of 2007 titled Baljit Singh Vs. The Presiding Officer and Others, the Hon'ble High Court ordered the reinstatment of the workman with countinuity of service but without back wages. The learned counsel for the workman also conceded that workman be not given back wages.

In result it is held that the action of the management in terminating the service of workman *w.e.f.* 1.2.2002 is not legal and he is entitled to be reinstatement with continuity of service but without back wages. Respondent management is directed to take him back in service within one month of the publication of the award. The reference is answered in favour of the workman. Let hard and softcopy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 28 फरवरी, 2014

का॰आ॰ 985.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ सं॰ 171/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/194/2001- आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th February, 2014

S.O. 985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.171/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 28/02/2014.

[No. L-12012/94/2001-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 171/2005

Registered on 1.8.2005

Sh. Romesh Kumar, S/o Sh. Babu Singh, C/o Sh. Janakraj Sharma Advocate, 614 Court Road, Opp. Bank of Baroda Ambala (Haryana).

...Petitioner

Versus

The Regional Manager, Indian Bank, Vijay Ratan Chowk, Ambala Cantt.

....Respondent

APPEARANCES:

For the Workman : Sh. Satyavir A.R.

For the Management : Sh. Naresh K. Nanda Adv.

AWARD

Passed on 6.2.2014

Central Government vide Notification No. L-12012/94/2001-IR(B-II)) Dated 16/23.8.2001, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Indian Bank represented through the manager, Indian Bank, Rai Market Ambala Cantt. (earlier Vijay Rattan Chowk) and Regional Manager, Indian Bank, Chandigarh in terminating the services of Sh. Romesh Kumar S/o Sh. Babu Singh, Water-Boy-cum-Peon *w.e.f.* 8.3.1997, is just and legal? If not, what relief the workman is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he joined the respondent-bank on 1.1.1991 as Peon/Waterman and he was issued an Identity Card. He also got issued a concessional bus-pass which was signed by the Manager. Payment was made to him through vochers. His services were terminated on 9.3.1997 without any reason. He has not been paid any compensation though he completed more than 240 days of service. He was given the assurance that his services would be regularized and till that time payment would be made to him by collection from the staff, but that too has been stopped w.e.f. 2.8.1999. Since his termination is illegal, he is entitled to be reinstated in service with full back wages and continuity of service.

Repondent management filed written statement controverting the averments pleading that bank had a generator and the owner of the generator employed the workman for its operation. That he is not an employee of the bank. Sometimes he was asked to bring water for the bank and for the same he was paid through vouchers.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. B.B. Pahwa was examined by the respondent who supported its case as set out in written statement.

I have heard Sh. Satyavir, AR of the workman and Sh. Naresh K. Nanda counsel for the management.

A.R. of the workman has carried me through the statement of the workman and submitted that workman has specifically stated that the was employed by the respondent management which also get corroboration from the Identity Card Exhibit W2 issued by the Branch Manager J.C. Dhuria and an application for issuing of concessional bus pass Exhibit W1 which was also forwarded by the said person and submitted that it stands conclusively proved on the file that the workman was an employee of the respondent management.

I have considred the contentions.

Respondent management is a nationalized bank and have its Rules and Regulations for filling various posts. It is nowhere pleaded or proved how the workman was employed in the bank on 1.1.1991, It cannot be said on the simple assertions that he was employed in the bank on the said date and the document i.e. photocopy of the Identity

Card (Exhibit W2) and the application (Exhibit W1) which is allegedly signed by Sh. J.C. Dhuria Branch Manager, wherein the designation of the workman is mentioned as waterman, are of no help to him, as his appointment as such is not proved. According to the workman these are signed by Sh. J.C. Dhuria. Though he summoned Mr. J.C. Dhuria but his application was declined *vide* order dated 18.11.2010 and later on Mr. J.C. Dhuria expired. Even if it is assumed that these documents are signed by him, it is not shown that he was ever authorized to employ the workman as waterman and was authorized to sign the documents as such. According to the workman, he remained in employment from 1.1.1991 to 9.3.1997 but he did not make any effort to produce and prove any record to establish that he has drawn any salary from the bank at any point of time and in the absence of any documentary evidence, it cannot be said that he was ever employed as waterman/ peon by the bank.

Thus it is not established on the file that the workman was employed as a waterman-cum-peon and his services were terminated and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 3 मार्च, 2014

का॰आ॰ 986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ ईस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 08/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.03.2014 को प्राप्त हुआ था।

[सं॰ एल-22012/57/1988-डी-4 (बी)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 3rd March, 2014

S.O. 986.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 08/89) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 03.03.2014.

[No. L-22012/57/1988-D-4(B)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/8/89

SHRI R.B. PATLE, Presiding Officer

General Secretary,
Madhya Pradesh Koyla Mazdoor Sabha (HMS),
South Jhagrakhand Colliery,
Distt. Surguja (MP) ...Workman/Union

Versus

Dy. C.M.E/Sub Area Manager,
West Jhagrakhand Sub Area
SECL,
Distt. Surguja (MP) ...Management

AWARD

(Passed on this 12th day of December, 2013)

1. As per letter dated 3-1-89 by the Govenment of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-22012/57/88-D-4(B). The dispute under reference relates to:

> "Whether the action of the management in relation to B Seam Colliery of West Jhagrakhand Sub Area of SEC.Ltd. in dismissing their workkan Shri Ramadhar Loader from services *w.e.f.* 1-11-1986 is legal and justified? If not, to what relief the workman concerned is entitled and from what date?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 3/1 to 3/2. The case of Ist party workman is that he was working as Loader/dresser in B Seam Colliery managed by IInd party. On 30-10-86, his services were terminated without conducting enquiry, issuing showcause notice or giving any opportunity. That prior to his termination, he was suspended on 26-10-86. The dispute was raised before ALC, Shahdol. Ist party workman further submits that he was Organising Secretary M.P. Koyla Mazdoor Sabha of B Seam colliery. The management was annoyed with him as he raised dispute regarding the marking present of loaders who were absent. That his services were deliberately terminated without conducting any enquiry. It is reiterated that he was not given any opportunity, within 5 days period, the management decided to dismiss his services. Action of the management is arbitrary, illegal. On such ground, workman prays for setting aside order of his dismissal and rays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 2/1 to 2/4. Claim of Ist party workkan is denied. IInd party submits that Ist party workman was working as labour in B Seam Colliery, Hasdeo Area. On 28-10-86, around 8.50 AM, Colliery Manager Mr. Mukherjee was coming from time office and approaching towards his office. Ist party workman Ramadhar assaulted Mr. Mukherjee with lathi. Mr. Mukherjee suffered injuries. Workman inflicted 12-14 lathis on Mr. Mukherjee who was referred for medical examination. Different injuries were found on his body like contusion

on right forearm about 1 1/2" below elbow joints of size about 3"x1 1/2" with swelling, Haemotoma on Left Palur, Abrasion 4"x1 1/8 " on Left Leg, Abrasion 2" x 2" about 3 " above and behind ilise Right side.

4. IInd party submits that formal enquiry was conducted by Shri Katare Dy. Personnel Manager, he has recorded evidence of 10-12 persons present at the time of incident. On the basis of said evidence collected by Shri Katare and his findings, Dy. Chief Manager Hasdeo Area submitted note sheet dated 13-10-86 recommending dismissal for Ist party workman. General Manager Hasdeo Area agreed with the same. As such Ist party workman was terminated from 30-10-86. IInd party further submits that Ist party workman is in habit of assaulting people working in the colliery. That earlier Ist party workman was issued chargesheet on 18-1-86 for disobeying orders of his superiors, warning was issued to him, on 18-11-86 for disobeying orders of his superiors, warning was issued to him, on 18-11-86 chargesheet was issued for disobeying orders of superiors. On 23-3-86, the chargesheet was issued to him for disorderly behavior threatening, abusing superior and the punishment of suspension was imposed. On 29-3-86, chargesheet was issued, workman was severely warned. On 27-11-86, chargesheet was issued for serious misconduct, the workman was warned. After receiving chargesheet dated 27-10-86 workman was under suspension. He assaulted Mr. Mukherjee on 28-10-86.

5. IInd party further submits that Mr. Mukherjee had suffered serious injuries from assault by workman. That it was not possible to conduct departmental enquiry against workman as he had very bad record of service. The details are given in termination order dated 30-10-86 issued to the workman. The management further submits that as formal enquiry was not conducted against workman, proper action about misconduct committed by workman is taken. The management submits that he be permitted to prove charges against workman. On such ground, IInd party submits that the dismissal of Ist party workman is justified and prays for rejection of the claim.

6. Considering pleadings between parties and order of reference, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of West Jhagrakhand Sub Area of SEC.Ltd. in dismissing their workman Shri Ramadhar Loader from services *w.e.f.* 1-11-1986 is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

7. Point No. 1- In present case formal enquiry is not conducted against workman. The management has requesting permission to prove misconduct committed by workman. The evidence of witnesses Shri K.V. Vishwakarma, Karamat Ali, Chandrika Prasad, Naresh Pal Saini, Durbal, S/o Ranjas, U.K. Behra Medical Officer, S.A. Mukherjee Manager, P.K. Sharma, Gaya Prasad Singh, Rajendra Prasad, Satyadev Pal, Bhola S/o Shankar, Ramashray Satya Dev Gupta, Ramadhar Loader is adduced on affidavit. The witnesses were cross-examined. All of witnesses have supported that delinquent workman Ramadhar assaulted with stick on Shri Mukherjee, the Mines Manager, inflicted several blows with sticks causing injuries to him. From evidence of witness U.K. Behra, the injuries on body of Mr. Mukherjee were found lacerated wound about 1" x 3/4" x 3/4" on right elbow, contusion on right forearm 21/2" below elbow joints of size 3"x1 1/2" with swelling, Haemotoma on Left Palur, Abrasion 4"x1 1/8 " on Left Leg, Abrasion 4" x 1" on left leg, Abrasion 2" x 2" about 3 " above and behind ilise Right side. The evidence of witness is not shattered in his cross-examination.

8. Mr. Mukherjee has also stated that he was inflicted stick blows by delinquent workman. Other witnesses also corroborates the evidence of Mr. Mukherjee. In his cross-examination Mr. Mukherjee has denied that workman had also suffered injuries at the time of incident. Cross-examination of Mr. Mukherjee shows that after blow inflicted on him by workman, he was lied down. Copy of judgment by Criminal Court is produced at the time of argument by learned counsel for Ist party. From reading of judgment, it is seen that Ist party was acquitted being benefit of doubt minor inconsistency in evidence of the witnesses. The legal position is shattered that burden of proof in criminal case and domestic enquiry is different. In domestic enquiry, it is not necessary to prove alleged misconduct beyond reasonable doubt.

9. Learned counsel for Ist party Shri Shrivastava did not advance any argument about the evidence adduced by the management. Learned counsel for Ist party Mr. Shrivastava submits that the chargesheet is not issued to the workman. Therefore no enquiry was conducted against him. In absence of chargesheet, no enquiry can be conducted against workman, question of law can be raised at any stage it does not require pleading. In support of his above argument learned counsel relies on ratio held in.

> "Case of UCO Bank and Another *versus* Rajinder Lal Capoor reported in 2008(5) Supreme Court Cases 257. Their Lordship dealing with UCO Bank Officers Service Regulations 1979 Regulation 20(3)(ii) held disciplinary proceedngs are initiated from the stage chargesheet is served and not from the stage of preliminary enquiry. Legal fiction of deemed pendency of disciplinary proceedings from the stage of issue

of showcause notice created by 1979 Regulations held operates in a different field and therefore does not apply to 1976 Regulations.

Ratio held in above case is directly permit to prove misconduct by adducing evidence in Court. Whether it is necessary to issue formal chargesheet. In present case the Written Statement filed by IInd party elaborately narrates the incident dated 18-10-86 around 8.50 AM Shri S.A. Mukherjee was assaulted by Ist party workman inflicted injuries of different size, dimensions and formal enquiry made by Shri Katare. The facts are set out in Para 3 & 4 of the Written Statement. The workman did not file rejoinder to it. The evidence of several witnesses is filed. The witnesses are cross-examined. Workman was also supplied copy of documents produced. Order of dismissal Exhibit M-25 also finds elaborate reference of the incident alleged against the workman. Learned Counsel for Ist party Mr. Shrivastava further relied in ratio held in—

Case of Shri Udhav Singh *versus* Madhav Rao Scindia reported in 1977(1) Supreme Court Cases 511. In para-26 of the judgment, their Lordship observed an objection on ground of non-compliance with the requirement of Section 82 (b) arises out of allegations made in the petition itself. Such a plea raises a pure question of law depending on a construction of the allegations in the petition, and does not require evidence for its determination. Such a plea therefore, can be raised at any time even without formal amendment of the Written Statement."

The ratio held does not deal with the question whether formal chargesheet is necessary to be served on workman when permission is granted by Court to prove in case when formal enquiry is not held. Therefore the ratio in above case cannot be beneficially applied to case at hand. Therefore I do not find substance in the argument advanced by the counsel for Ist party.

10. The evidence of witnesses discussed above is sufficient to prove that the workman inflicted stick blows on Mr. Mukherjee Mines Manager causing injury to him. I therefore record my finding in Point No. 1 in Affirmative.

11. Point No. 2- the evidence of the witnesses of the management clearly shows that the workman inflicited stick blows causing injury to Mines Manager Mr. Mukherjee. It is serious misconduct. Assaulting Mine Manager for any reason does not deserves leniency. Learned counsel for IInd party has submitted bunch of citations along with Page 36. I am not inclined to discuss in detail the ratio held in all those cases. Considering the gravity of misconduct proved from evidence of witness of the management., dismissal of workman cannot be said illegal. No leniency is justified in the matter. The purnishment of dismissal from service does not call for interference. Therefore I record my finding in Pont No. 1 in Affirmative.

12. In the result, award is passed as under:—

(1) The action of management in relation to B Seam Colliery of West Jhagrakhand Sub Area of SEC. Ltd. in dissmissing their workman Shri Ramadhar Loader from services w.e.f. 11.11.1986 is proper and legal.

(2) Workman is not entitled to any relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली 3 मार्च, 2014

का॰आ॰ 987.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ ईस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 127/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.03.2014 को प्राप्त हुआ था।

[सं॰ एल-22012/8/1995-आईआर (सी-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 3rd March, 2014

S.O. 987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 127/95) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 03.03.2014.

[No. L-22012/8/1995-IR (C-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/127/95

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Koyla Shramik Sanga, (UTUC),
Post Dhanpuri,
Distt. Shahdol ... Workman/Union

Versus

Sub Area Manager,
Amlai Sub Area of SECL,
Post Amlai Colliery,
Distt. Shahdol ... Managerment

AWARD

(Passed on this 1st day of November, 2013)

1. As per letter dated 10.7.95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/ 8/95/IR(C-II). The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, Amlai sub Area of SECL of Sohagpur Area of SECL in dismissing Shri Ramlalit, Mining Sirdar, T.No. 1829, Amlai Collieiry from company services w.e.f. 4.6.94 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted Statement of Claim at Page 4/1 to 4/2. The case of workman is that he was working as Mining Sirdar, Token No. 1829. He joined service in 1973. That he performed his services with devotion without any adverse remarks. On 18.7.91, chargesheet was served to him. He was also suspended. The allegation in chargesheet were that he had illegally constructed house on land beloning to IInd party SECL, Sohagpur. As per the Ist party workman, he did not construct house. His elders are residing separately with his family. That his family had constructed the house. He was not concerned with the construction of house. That the enquiry was conducted out of vengeance. The workman prayed for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 7/1 to 7/3. IInd party did not dispute that Ist party workman was working as Mining Sirdar Token No. 1829 in Amlai Colliery, Sohagpur Area. That he had constructed a structure near durga temple on the company's land. The construction was unauthorized. That Charge No. 989 dated 18.11.91 was issued to the workman. The reply submitted by workman was not found satisfactory. Shri A.K. Srivastava was appointed as Enquiry Officer. The enquiry was conducted. Witnesses of the management were cross-examined. Reasonable opportunity was given to the workman for his defence. The charges were provied from evidence in Enquiry Proceedings. Serious misconduct was committed by Ist party workman. The punishment was imposed considering gravity of misconduct. If it is found that enquiry is vitiated, IInd party be given promotion to prove misconduct before Court. On such contentions, IInd party submits that termination of workman from service is legal. Relief prayed by workman be rejected.

Preliminary issue of legality of enquiry is decided by my learned predecessor vide order dated 8.11.2010. The enquiry conducted against workman is found legal and proper.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the Sub Area Managter, Amlai sub Area of SECL of Sohagpur Area of SECL in dismissing Shri Ramlalit, Mining Sirdar, T.No. 1829, Amlai Collieiry from company services w.e.f. 4.6.94 if legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. The enquiry conducted against workman is found legal for deciding Point No. 1, it is necessary to consider whether the findings of Enquiry Officer are supported by same evidence, whether the punishment of termination from service imposed against workman is proper and legal. I have carefully gone through the record of the Enquiry Proceedings. All the witnesses of the management have stated that the construction was made by side of Durga Temple Road by workman. That son of workman Ashok Kumar is working as Driver. Learned Counsel for workman Shri R.C. Shrivastava did not advanced any argument on the point of findings of Enquiry Officer and evidence in Enquiry Proceedings. Learned counsel for workman submits that the encroachment is not proved. That evidence is subsequently produced. Workman could have been evicted for unauthorized construction under Public Premises Eviction Act, 1971. That said officer is appointed in SECL. The said officer did not make any enquiry for unauthorized construction of the workman therefore learned counsel for workman further submits that the misconduct alleged on part of workman is not proved rather is found to have made unauthorise to have been removed under provisions of Public Premises Eviction Act. Learned counsel for IInd party emphasized that powers of the employment to hold enquiry for misconduct on part of Ist party workman are not taken away by the provisions of said Act, the termination from service is proper and legal. The evidence whether the punishment imposed on workman is legal and proper. The gravity of misconduct needs to be considered therefore the evidence in Enquiry Proceedings needs to be looked into. Cross-examination of management's witness Shri Mishra Page 8/22-23 shows that Wooden Thela was kept by side of road. Said Wooden Thela was used for repairing bicycles. The size of Thela was less in area. The Construction made by workman was of larger size. The charge sheet issued to the workman does not show the size of construction made by the workman. Any of the witnesses of the management have also not stated about the size of the unauhorized construction made by the workman but from evidence in cross-eamination of witness Vishnudeo Mishra, it is clear

that unaouthorised consideration made by workman was bigger than wooden Thela which was kept by side of road. The management of IInd party inspite of taking action for removal of unauthorized construction involving provisions of Public Premises Eviction Act, 1971 initiated departmental enquiry. No doubt, the IInd party is competent to conduct enquiry about the misconduct committed by workman that the size of unauthorized construction shows very small, bigger than a Thela. Bicycle repairing work was done by workman in that construction which shows his intention to get income from such manner. The map produced by managerment also shows the small size of unauthorised construction. The map has not been proved. For small construction, bigger than a Wooden Thela, punishment of termination from service is certainly disproportionate. The termination from service has impact on entire family. I need not say that it causes civil death of family. Keeping those aspects in view, in my considered view, the termination of service is not justified. Accordingly I record my finding in Point No. 1 in Negative.

7. Point No. 2- In view of my finding in Point No. 1 that the action of management in terminating service of workman is not justified, question arises as to what relief the workman is entitled for? In present case, the workman was working as Mining Sirdar. He was dismissed from service long back. The denial of back wages would be sufficient punishment. Accordingly I record my finding in Point No. 1.

8. In the result, award is passed as under:—

(1) Action of the Sub Area Manager, Amlai sub Area of SECL of Sohagpur Area of SECL in dismissing Shri Ramlalit, Mining sirdar, T. No. 1829, Amlai Collieiry from company services w.e.f. 4.6.94 is not proper.

(2) IInd party management is directed to reinstate the workman in service but without back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 मार्च, 2014

का॰आ॰ 988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 47) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 193/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/03/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/276/1994-आईआर (सी-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 3rd March, 2014

S.O. 988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.193/94) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 03/03/2014.

[No. L-22012/276/1994-IR (C-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/193/94

SHRI R.B. PATLE, Presiding Officer.

General Secretary,
SKMS (AITUC),
Post Eklahra,
Distt. Chhindwara (MP) .... Workman/Union

Versus

Manager,
Rakhikol Colliery of WCL,
Post, Distt. Chhindwara .... Management

AWARD

(Passed on this 22nd day of November, 2013)

1. As per letter dated 4-10-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/276/94-IR (C-II). The dispute under reference relates to:

> "Whether the action of the management of Rakhikol Colliery of WCL, Kanhan Area PO Rakhikol, Distt. Chhindwara (MP) in dismissing Shri Sundarlal S/o Daliram, Tub Loader *w.e.f.* 7-3-93 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 2/1 to 2/2. The case of workman is that he was appointed as tub loader in Mohan Colliery in 1975. The job of tub loader is of permanent nature. He claims to be working on permanent post. That he was availing sick leave, Casual Leave. Paid leave as other permanent workers availed. That he was transferred to Rakhikol colliery without legal ground. His transfer was disputed. That the transfer caused his inconvenience as he was residing at remote village. There was no road to go to Rakhikol regularly. The workman also claimed to be in receiving treatment from company dispensary and outside. That he was served with chargesheet for unauthorised absence for period more than 10 days without sufficient cause, without prior permission. The chargesheet was received on 12-11-90. The workman

submits that said chargesheet was condoned *vide* letter dated 17-11-90. That despite of it, the management has dismissed workman on same chargesheet and order dated 20-2-93. The action is taken by management without considering record. On such ground, Ist party workman prays for his reinstatement with consequential benefit.

3. IInd party filed Written Statement at Page 4/1 to 4/3. IInd party submits that workman was employed at Rakhikol Colliery as Badli Tub Loader. He was in habit to remaining absent from duty for long period without informaion, without reasonable cause. Workman was absent without reasons from 16-9-91 till November, 1992. The chargesheet was issued to him on 19-7-92 regarding his habitual unauthorized absnece. The reply given by workman was not found satisfactory. Enquiry Officer was appointed. Enquiry Officer issued notice of enquiry dated 12-10-92, 30-10-92. Workman was present. He admitted charge. However the Presenting Officer was directed to substantiate the charges. Workman was given opportunity for his defence.

4. IInd party further submits that Enquiry officer submitted his findings holding workman guilty of charges against him of unauthorized absence. Chart of the working days of workman from 1989 to 1992 are given by IInd party. Workman was present for 82½ days in 1989, 88 days in 1990, 3 days in 1991, 2 days in 1992. IInd party submits that workman was unauthorisely absent. It is proved from evidence in enquiry. Therefore his dismissal from service is proper and legal.

5. Ist part workman filed rejoinder at Page 5 contending that the action of the dismissal was taken against him on chargesheet dated 21-11-90 by the management is illegal. Management filed rejoinder at Page 6/1 to 6/2 and contended that the workman was not dismissed on same chargesheet. His dismissal is legal and proper.

6. *Vide* order dated 19-3-2012, my predecessor has found enquiry conducted against workman is proper and legal.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal imposed against workman is legal and proper?	In Affirmative
(iii)	To what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

8. The enquiry conducted against workman is found legal and proper. The copy of Enquiry Proceeding is produced at exhibit M-1. Workman has admitted charge of unauthorized absence. In view of admission of his absence by workman, the misconduct alleged against workman is proved. I may note that the workman has pleaded that he was proceeding on sick leave, CL, Paid leave but no documents were produced in Enquiry Proceedings by workman that he was sanctioned any kind of such leave during the period of alleged unauthorized absence. The workman was authorisely absent. After Issue No. 1 is decided, workman has not adduced any evidence. Workman and his counsel remained absent. Any argument is not adduced on behalf of workman. Considering unauthorized absence alleged against workman, 16-9-91 to 16-7-92 is long period. I don't find reason to interfere the punishment of dismissal imposed against workman. For above reasons, I record my finding on Point No. 1, 2 in Affirmative.

9. In the result, award is passed as under:—

(1) Action of the management of Rakhikol Colliery of WCL, Kanhan Area PO Rakhikol, Distt. Chhindwara (MP) in dismissing Shri Sundarlal S/o Daliram, Tub Loader *w.e.f.* 7-3-93 is proper.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 मार्च, 2014

का॰आ॰ 989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 47) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ ईस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 144/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/03/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/22/2001-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 3rd March, 2014

S.O. 989.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 144/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 03/03/2014.

[No. L-22012/22/2001-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/144/2001

PRESIDING OFFICER: SHRI R.B. PATLE

The Secretary,
Koyla Mazdoor Sabha,
At & PO South Jhagrakhand,
Distt. Korea,
Chhattisgarh ...Workman/Union

Versus

Sub Area Manager,
Jhagrakhand Colliery of SECL,
PO south Jhagrakhand,
Distt. Korea,
Chhattisgarh ...Management

AWARD

(Passed on this 30th day of January, 2014)

1. As per letter dated 31-7-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/22/2001-IR(CM-II). The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, West Jhagrakhand Sub Area of SECL, PO South Jhagrakhand Colliery, Distt. Korea (Chhattisgarh) in not providing employment on compassionate ground to Smt. Brahaspatiya Bai D/o Late Shri Phirtu Ram, Ex-employee of Khongapani Colliery is legal and justified? If not, to what relief she is entitled to?"

2. After receiving reference, notices were issued to the parties. Management had filed application under Section 10 of CPC for stay of the proceeding submitting that the workman has filed Writ Petition No. 970/2002 before Hon'ble High Court for the similar relief. Copy of said Writ petition is produced alongwith copies of the documents produced in writ Petition. My predecessor vide order dated 2-7-09, management was directed to produce last order passed by Hon'ble High Court. On 25-11-10, it was observed that Writ Petition is filed in 2002 whereas reference is pending since 2001. The reference will continue. Parties were at liberty to take appropriate steps. The workman was proceeded exparte on 9-8-2012.

3. IInd party management filed exparte Written Statement contending that workman has not filed Statement of Claim. Workman is proceeded exparte. That writ Petition No. 970/2002 is filed for same relief before Hon'ble High Court, Chhattisgarh. The reference is not tenable. Ist party is not entitled to employment to employment on compassionate ground as one of the dependent of workman Phirturam was provided employment as dependent.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the Sub Area Manager, West Jhagrakhand Sub Area of SECL, PO South Jhagrakhand Colliery, Distt. Korea (Chhattisgarh) in not providing employment on compassionate ground to Smt. Brahaspatiya Bai D/o Late Shri Phirtu Ram, Ex-employee of Khongapani Colliery is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

5. Though the terms of reference relates to denial of employment on compassionate ground to Smt. Brihaspatiya Bai, D/o Late Phirtu Ram in the colliery, no statement of claim is filed in support of the said relief by Ist party. Ist party is proceeded exparte on 9-8-2012. Management filed exparte Written Statement denying claim of Ist party. Affidavit of evidence of management's witness G. Shyamla Rao is filed. The witness of management has stated that Phirtu Ram was working as General Mazdoor at IWSS Plant. He was declared medically unfit from 29-3-89. As per provisions of NCWA, dependent employment is provided to Shri Daluram, Son in law of Phirtu Ram. Therefore the claim of Ist party is not liable. Ist party has not participated in the reference proceeding. Evidence of management's witness remained unchallenged. I do not find any reason to disbelieve his evidence. Copies of affidavit of Brihaspatiyabai is produced. For above reasons, I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

(1) The action of the Sub Area Manager, West Jhagrakhand Sub Area of SECL, PO South Jhagrakhand Colliery, Distt. Korea (Chhattisgarh) in not providing employment on compassionate ground to Smt. Brahaspatiya Bai D/o Late Shri Phirtu Ram, Ex-employee of Khongapani Colliery is legal and proper.

(2) Ist party is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 मार्च, 2014

का॰आ॰ 990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ ईस्टर्न

कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 153/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/03/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/12/1997-आई आर (सी-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 3rd March, 2014

S.O. 990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/98) of the Central Government Industrial Tribunal-Cum Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 03/03/2014.

[No. L-22012/12/1997-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/153/98

PRESIDING OFFICER: SHRI R.B. PATLE

Joint Secretary,
Rashtriya Colliery Workers Federation,
Jhimar Colliery, ...Workman/Union
Distt. Shahdol (MP)

Versus

The Sub Area Manager,
Ram Nagar, RO SECL,
Post Ramnagar Colliery, ...Management
Distt. Shahdol (MP)

AWARD

(Passed on this 29th day of January 2014)

1. As per letter dated 16-7-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/12/97-IR(C-II). The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, Ramnagar RO of SECL, Hasdeo Area in not regularizing Shri Ram Lal and Shri Shyam Sunder (General Mazdoor and Timber Mazdoor in the post of tub checker i.e. Tub Munshi and also not making payment to them of difference of wages for higher nature of work is legal and justified? If not, to what relief the workmen are entitled?'

2. After receiving reference, notices were issued to the parties. Ist party filed statement of claim at Page 2/1 to 2/9. The case of 1st Party workman is that he was appointed as coal loading mazdoor on daily wages on 2-1-80 in Ramnagar Colliery, SECL. He was designated as General Mazdoor in March, 1981 and considered on permanent basis. He was confirmed without break as employee of coal mines. He was paid monthly salary. Since Ramnagar colliery was closed, he was transferred to Jhimar colliery on 20.5.95. He was asked to work as tub writer. Accordingly he was working as Tub Munshi from December, 1992. The basic pay of General Mazdoor was Rs. 1300/- per month whereas basic pay of Tub Munshi was Rs. 2200/- per month. Job of General Mazdoor was to support the upper roof of mines by using balli, dressing, cleaning, packing etc. The job of Tub Munshi is of clerical nature while salary being paid to Tub Munshi is higher by Rs. 1000/- than General Mazdoor. Though the work of tub Munshi was extracted from workman from April, 93 to August, 95, he was not paid salary of tub Munshi despite of his repeated request. The grievance was brought to knowledge of Rashtriya Colliery Workers Federation. He worked for more than 240 days as Tub Munshi. He was not paid difference of wages for the post of Tub Munshi. The workman is praying that he may be regularized on the post of Tub Munshi and also higher wages and said post be granted to him.

3. IInd party filed Written Statement at page 5/1 to 5/3. Claim of workman is denied. It is denied that workman was asked to work as tub writer/Munshi clerical grade. The claim is based on verbal instruction purported to have been given by Shri P.K. Pradeep, Manager, Jhimer Colliery, Ramnagar Sub Area. That Shri P.K. Pradeep was not confident to give such instructions. Workman was not expected to act upon verbal instructions. Workman is not entitled to wages of tub Munshi claimed by him. That workman cannot claim wages comparing himself with workers working in different categories. IInd party prays for dismissal of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the Sub Area Manager, Ramnagar RO of SECL, Hasdeo Area in not regularizing Shri Ram Lal and Shri Shyam Sunder (General Mazdoor and Timber Mazdoor in the post of tub checker i.e. Tub Munshi and also not making payment to them of difference of wages for higher nature of work is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workmen are not entitled to relief prayed by them.

REASONS

5. Though workman are claiming regularization on the post of tub Munshi and higher wages of said post, the workman failed to participate in the reference proceeding. They did not adduce evidence in support of their claim. The evidence of workman is closed on 22-12-2010. The management filed affidavit of evidence of witness of Shri Arun Kumar Shrivastava covering all contentions in Written Statement filed by the management. That Manager is not empowered to employ any person to the post of Munshi. Shri P.K. Pradeep, the then Manager was not competent nor engaged the 1st party workman as Munshi at that time. That Shabhonath Yadav and Shri S.S. Vishwakarma were working as Timber Mistry in Category IV and steel prop Mazdoor in Category III respectively. Ist party workman cannot compare with them. The evidence of management's witness remained unchallenged. The management's witness was not cross-examined. I do not find reason to disbelieve evidence of management's witness. Workman have failed to adduce evidence in support of their claim therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

(1) The action of the Sub Area Manager, Ramnagar RO of SECL, Hasdeo Area in not regularizing Shri Ram Lal and Shri Shyam Sunder (General Mazdoor and Timber Mazdoor in the post of tub checker i.e. Tub Munshi and also not making payment to them of difference of wages for higher nature of work is legal and proper.

(2) Workmen are not entitled to relief prayed by them.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 मार्च, 2014

का॰आ॰ 991.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अप्रैल, 2014 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा -76 की उप धारा - (1) और धारा -77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:-

क्रम सं॰	राजस्व गांव का नाम	तहसील का नाम	जिले का नाम
1.	2.	4.	5.
1.	कालाडेरा	चौमू	जयपुर

[सं॰ एस-38013/13 /2004-एस॰एस॰ 1]
पवन कुमार, अवर सचिव

New Delhi, the 4th March, 2014

S.O. 991.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:—

S. No.	Name of Revenue Village	Name of Tehsil	Name of District
1	2	3	4 5
1	KALADERA	CHOMU	JAIPUR

[No. S-38013/13/2014-S.S.I]
PAWAN KUMAR, Under Secy.

नई दिल्ली, 4 मार्च, 2014

का॰आ॰ 992.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा -1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अप्रैल, 2014 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा -76 की उप-धारा (1) और धारा 77,78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:-

क्रम सं॰	विवरण	तहसील का नाम	जिले का नाम
1.	जिला बांसवाड़ा तहसील गनोड़ा के निम्नांकित राजस्व ग्राम के अन्तर्गत आने वाले क्षेत्र:-(1) मुंगाना (2) दौलत सिंह का गढ़ा (3) अन्तकालीया (4) चन्दूजी का गढ़ा (5) चांदाखेड़ी (6) नागदला (7) मोरड़ी निचली (8) मोरड़ी ऊपली (9) इसरवाला (10) टिकला (11) बडलिया (12) टिम्बा गामड़ी (13) टाटिया (14) नौखा	गनोड़ा	बांसवाड़ा

[सं॰ एस-38013/14/2014-एस॰एस॰ 1]
पवन कुमार, अवर सचिव

New Delhi, the 4th March, 2014

S.O. 992.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections

77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:—

S. No.	Particular	Name of Tehsil	Name of District
1	The Following Revenue Villages failling within the limit of Ganora Tehsil, Distt.-Banswara (1) Mungana (2) Daulat Singh Ka Gara (3) Antkaliya (4) Chanduji Ka Gara (5) Chanda Kheri (6) Nagdala (7) Mordi Nichali (8) Mordi Upli (9) Isarwala (10) Tekla (11) Badliya (12) Timba Gamri (13) Tatiya (14) Noka	Ganora	Banswara

[No. S-38013/14/2014-S.S.I]
PAWAN KUMAR, Under Secy.

नई दिल्ली, 4 मार्च, 2014

का॰आ॰ 993.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अप्रैल, 2014 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

क्रम सं॰	राजस्व गांव का नाम	हद बस्त संख्या	तहसील का नाम	जिले का नाम
1	2	3	4	5
1.	नीम का थाना		नीम का थाना	सीकर
2.	नीम का थाना ग्रामीण		नीम का थाना	सीकर
3.	हीरा नगर		नीम का थाना	सीकर
4.	बल्लभदास पुरा		नीम का थाना	सीकर
5.	खादरा		नीम का थाना	सीकर
6.	गांवडी		नीम का थाना	सीकर
7.	जगतसिंह नगर		नीम का थाना	सीकर
8.	मानपुरा		नीम का थाना	सीकर
9.	निमोद		नीम का थाना	सीकर
10.	महावा		नीम का थाना	सीकर
11.	भराला		नीम का थाना	सीकर
12.	बणियाला		नीम का थाना	सीकर
13.	ढाणी चला		नीम का थाना	सीकर
14.	गोडावास		नीम का थाना	सीकर
15.	चक चारावास		नीम का थाना	सीकर
16.	मंढोली		नीम का थाना	सीकर
17.	माकडी		नीम का थाना	सीकर
18.	श्याम नगर		नीम का थाना	सीकर
19.	सढू का वास		नीम का थाना	सीकर
20.	नापावाली		नीम का थाना	सीकर
21.	चक मण्डोली		नीम का थाना	सीकर
22.	चारणवास उर्फ पुरानावास		नीम का थाना	सीकर
23.	कोटडा		नीम का थाना	सीकर
24.	कैरवाली		नीम का थाना	सीकर
25.	राजनगर		नीम का थाना	सीकर
26.	आगवाडी		नीम का थाना	सीकर
27.	कुरबडा		नीम का थाना	सीकर
28.	माल नगर		नीम का थाना	सीकर
29.	सिरोही		नीम का थाना	सीकर
30.	भूदोली		नीम का थाना	सीकर
31.	बृसिवास		नीम का थाना	सीकर
32.	राणासर		नीम का थाना	सीकर
33.	गोरधनपुरा		नीम का थाना	सीकर
34.	भगेगा		नीम का थाना	सीकर
35.	भगेगा आर एस		नीम का थाना	सीकर
36.	नया बास		नीम का थाना	सीकर
37.	देवनगर		नीम का थाना	सीकर

[सं॰ एस-38013/15/2014-एस॰एस॰ 1]
पवन कुमार, अवर सचिव

New Delhi, the 4th March, 2014

S.O. 993.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the Ist April, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:—

S. No.	Name of Revenue Village	Had Bast Number	Name of Tehsil	Name of District
1	2	3	4	5
1.	Neem ka Thana		Neem ka Thana	Sikar
2.	Neem ka Thana Grameen		Neem ka Thana	Sikar
3.	Heera Nagar		Neem ka Thana	Sikar

1	2	3	4	5
4.	Ballabhdas Pura		Neem ka Thana	Sikar
5.	Khadra		Neem ka Thana	Sikar
6.	Gaori		Neem ka Thana	Sikar
7.	Jagatsingh Nagar		Neem ka Thana	Sikar
8.	Manpura		Neem ka Thana	Sikar
9.	Neemod		Neem ka Thana	Sikar
10.	Mahwa		Neem ka Thana	Sikar
11.	Bharala		Neem ka Thana	Sikar
12.	Baniyala		Neem ka Thana	Sikar
13.	Dhani Chala		Neem ka Thana	Sikar
14.	Godawas		Neem ka Thana	Sikar
15.	Chak Charawas		Neem ka Thana	Sikar
16.	Mandoli		Neem ka Thana	Sikar
17.	Makri		Neem ka Thana	Sikar
18.	Shyamnagar		Neem ka Thana	Sikar
19.	Seduka Bas		Neem ka Thana	Sikar
20.	Napawali		Neem ka Thana	Sikar
21.	Chak Mandoli		Neem ka Thana	Sikar
22.	Chanranwas@ Purana Bas		Neem ka Thana	Sikar
23.	Kotra		Neem ka Thana	Sikar
24.	Kairwali		Neem ka Thana	Sikar
25.	Rajnagar		Neem ka Thana	Sikar
26.	Agawari		Neem ka Thana	Sikar
27.	Kurbara		Neem ka Thana	Sikar
28.	Mal Nagar		Neem ka Thana	Sikar
29.	Sirohi		Neem ka Thana	Sikar
30.	Bhoodoli		Neem ka Thana	Sikar
31.	Bar Singh Was		Neem ka Thana	Sikar
32.	Ranasar		Neem ka Thana	Sikar
33.	Gordhan Pura		Neem ka Thana	Sikar
34.	Bhagega		Neem ka Thana	Sikar
35.	Bhagera RS		Neem ka Thana	Sikar
36.	Naya Bas		Neem ka Thana	Sikar
37.	Dev Nagar		Neem ka Thana	Sikar

[No. S-38013/15/2014-S.S. I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 4 मार्च, 2014

का॰आ॰ 994.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अप्रैल, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अधाय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:-

केन्द्र	क्षेत्र के अंतर्गत आने वाले निम्न राजस्व गांव
परमक्कुडी केन्द्र	परमक्कुडी तालुक में
परमक्कुडी तथा	1. परमक्कुडी नगरपालिका सीमा
इलयंकुडी तालुक	2. कमुदक्कुडी
रामनाथपुरम तथा	3. काट्टु परमक्कुडी
सिवगंगै जिला	4. उरप्पुली
	5. अरियवेंदल
	6. मंजूर
	7. वेंतोणी
	8. पोदुवक्कुडी
	9. सूडियूर
	10. मेलप्पार्तिबनूर
	11. एमनेस्वरम
	12. एम॰ कावनूर
	13. पाम्बूर
	14. मंजक्कोल्लै इलयंकुडी तालुक में
	15. कच्चात्त नल्लूर

[सं॰ एस-38013/16/2014-एस॰एस॰ 1]

पवन कुमार, अवर सचिव

New Delhi, the 4th March, 2014

S.O. 994.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu namely:—

Centre	Area Comprising the Revenue Villages of
1	2
Paramakudi Centre, Paramakudi & Ilayankudi Taluk, Ramanathapuram & Sivagangai District	1. Paramakudi Municipal Limit 2. Kamuthakudi 3. Kattuparamakudi 4. Urappuli 5. Ariyanendal

1	2
	6. Manjoor 7. Venthoni 8. Pothuvakudi 9. Soodiyur 10. Melaparthibanur 11. Emaneswaram, 12. S. Kavanoor 13. Pamboor 14. Manjakkollai in Paramakudi Taluk 15. Katchathanallur in Ilayankudi Taluk

[No. S-38013/16/2014-S.S.I]
PAWAN KUMAR, Under Secy.

नई दिल्ली, 4 मार्च, 2014

का॰आ॰ 995.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतदद्वारा 01 अप्रैल, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धरा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

केन्द्र	क्षेत्र के अंतर्गत आने वाले निम्न राजस्व गाँव
विरूदुनगर जिला में विरूदुनगर के उपनगर	राजपालयम तालुक में 1. जमीन कोल्लंगोण्डान 2. इलंदिरैकोण्डान 3. रेगुनादपुरम श्री विल्लिपुत्तूर तालुक में 4. विषुप्पनूर 5. अयन करिसलकुलम 6. पोन्नाड़कन्नी विरूदुनगर तालुक में 7. मूलीपट्टी 8. नाट्टार्मड़गलम 9. सेंड़कुन्ड्रापुरम सिवकासी तालुक में 10. पुदुक्कोट्टै एवं उसके उपग्राम सीतमानैकेनपट्टी 11. कालैयारकुरिच्ची 12. कीषान्मरैनाडु के अंतर्गत आने वाले राजस्व गाँव।

[सं॰ एस-38013/17/2014-एस॰एस॰ 1]
पवन कुमार, अवर सचिव

New Delhi, the 4th March, 2014

S.O. 995.—In exercise of the powers conferred by sub-section(3) of Section 1 of the Employees 'State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu namely:—

Centre	Area comprising the revenue villages of
Peripheral areas of Virudhunagar	Areas comprsing the Revenue Villages of 1. Zamin Kollan Kondan 2. Ilanthirai Kondan 3. Regunathapuram of Rajapalayam Taluk 4. Villuppanur 5. Ion Karishalkulam 6. Ponnankanni of Srivilliputhur Taluk 7. Moolipatti 8. Nattaramangalam 9. Sengundrapuram of Virudhunagar Taluk 10. Pudhukottai 11. Kalayarkurichi 12. Keelanmarai Nadu of Sivakasi Taluk in Virudhunagar District

[No. S-38013/17/2014-S.S. I]
PAWAN KUMAR, Under Secy.

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.